



Transcript Exhibit(s)

Docket #(s): T-00000A-97-0238

RT-00000F-02-0271

T-01051B-02-0871

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Exhibit #: J1, S1, S2, TW4, RUC01, MT&I,  
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AZ CORP COMMISSION  
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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER  
JEFF HATCH-MILLER  
COMMISSIONER  
MIKE GLEASON  
COMMISSIONER

IN THE MATTER OF QWEST  
CORPORATION'S COMPLIANCE WITH  
SECTION 252(e) OF THE  
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S  
COMPLIANCE WITH SECTION 271 OF  
THE COMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000A-97-0238

ARIZONA CORPORATION COMMISSION

DOCKET NO. T-01051B-02-0871

Complainant,

v

QWEST CORPORATION,

NOTICE OF FILING SETTLEMENT  
AGREEMENT AND REQUEST FOR AN  
EXPEDITED PROCEDURAL CONFERENCE

Respondent.

The Arizona Corporation Commission Staff ("Staff") and Qwest Corporation ("Qwest") hereby file their proposed Settlement Agreement in the above-captioned dockets. Staff and Qwest will file a Proposed Procedural Schedule by Tuesday, July 29, 2003, to govern the review and approval of the proposed Settlement Agreement. Staff and Qwest also request that the Commission conduct an expedited Procedural Conference no later than August 5, 2003, to discuss this matter with all parties.

1 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of July, 2003.

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8 QWEST CORPORATION

9  
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15 Original and 17 copies of the foregoing  
16 were filed this 25<sup>th</sup> day of July, with:

17 Docket Control  
18 Arizona Corporation Commission  
19 1200 West Washington Street  
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21 Copies of the foregoing were mailed and/or  
22 hand-delivered this 25<sup>th</sup> day of July, 2003, to:

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T-00000A-97-0238

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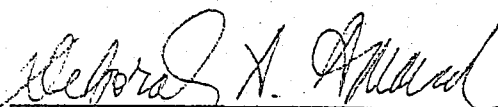
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## SETTLEMENT AGREEMENT

Qwest Corporation ("Qwest" or "the Company") and the Arizona Corporation Commission Staff ("Staff"), ("the Parties") hereby agree to a settlement (the "Settlement Agreement" or "this Agreement") of certain Dockets currently pending before the Arizona Corporation Commission ("Commission"), specifically Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act); Docket No. T-00000A-97-0238 (Subdocket) (the 271 Subdocket which addressed allegations that Qwest interfered with the 271 regulatory process); and Docket No. T-01051B-02-0871 (the Order to Show Cause ("OSC") for not implementing Commission approved wholesale rates on a timely basis). These Dockets shall be collectively referred to in this Agreement as the "Litigation." The following terms and conditions are intended to resolve all of the issues raised in or associated with the Litigation.

### RECITALS

WHEREAS, the Parties desire to adopt this Agreement subject to Commission approval;

WHEREAS, by adopting this Agreement, the Parties intend to settle and terminate the Litigation in a manner that is fair and reasonable;

WHEREAS, the 252(e) Unfiled Agreements Docket involved allegations that Qwest violated Section 252(e) of the Telecommunications Act by failing to file for Commission review and approval certain agreements with Competitive Local Exchange Carriers ("CLECs") operating in the state of Arizona;

WHEREAS, the 271 Subdocket involved allegations that Qwest improperly entered into settlement agreements with CLECs that resulted in the nonparticipation by such CLECs in the Commission docket evaluating Qwest's application under Section 271 of the Telecommunications Act, all without the Commission's knowledge; and that Qwest thereby interfered with the 271 regulatory process;

WHEREAS, the Order to Show Cause involved allegations that Qwest failed to implement the wholesale rate changes ordered in Decision No. 64922 within a reasonable period of time, that Qwest failed to notify the Commission of rate implementation delay, that Qwest failed to obtain Commission approval of the delay in implementation, and that Qwest's wholesale rate change system is unreasonably slow and inefficient;

WHEREAS, Qwest acknowledges, without admitting any wrongdoing, the concerns raised regarding the allegations which are the subject of the Litigation and expresses its regret over the events leading to the Litigation and, without admitting wrongdoing, Qwest states its intention to comply fully in the future with all written laws, rules, regulations and orders governing Qwest's conduct;

WHEREAS, Qwest avows that it is the policy and commitment of the Company to conduct all of its business affairs in the state of Arizona with integrity, honesty, in conformance with Arizona laws and regulations and with respect for the regulatory processes of the Commission.

WHEREAS, Qwest also acknowledges, without admitting any wrongdoing, concerns raised by the parties, including the Staff, regarding allegations that its behavior was designed to intentionally deceive and misrepresent certain facts before the Commission. Further, without admitting any wrongdoing, Qwest avows that the Company and its official representatives will not engage in fraudulent, deceptive or intentionally unlawful conduct in any matters pending before the Arizona Corporation Commission.

WHEREAS, Qwest acknowledges that Commission approval of this Settlement Agreement shall constitute a Commission Decision directing that Qwest implement the provisions of this Settlement Agreement which are intended to assure future compliance with respect to the filing requirements of Section 252(e) of the Telecommunications Act, to assure timely implementation of future cost dockets and to assure that Qwest files with the Commission any settlement agreement with a telecommunications carrier that would result in the carrier not participating in any generic docket of industry-wide general concern pending before the Commission and that violations of those provisions may be punished by contempt after notice and a hearing as provided by A.R.S. Section 40-424;

WHEREAS, as detailed in this Agreement, Qwest shall apply monies and issue credits to resolve the events leading to the Litigation, as well as implement procedures and accede to independent monitoring, thereby demonstrating the commitment of corporate management to comply with and to address the Commission's stated concerns that Qwest is to comply with the filing requirements of Section 252(e) of the Telecommunications Act, implement cost docket decisions in a timely manner, and apprise the Commission of any settlement with a telecommunications carrier that would result in the carrier not participating in any generic docket of industry-wide general concern before the Commission;

WHEREAS, while Qwest denies any wrongdoing, the parties agree that the terms and conditions of this Agreement, including but not limited to, the Cash Payment, Voluntary Contributions and Minimum Settlement Amount, are fair, reasonable and in the public interest;

WHEREAS, in consideration thereof, the Parties agree as follows:

## TERMS AND CONDITIONS

### 1. CASH PAYMENT.

Qwest agrees to pay an Aggregate Cash Payment Amount of \$5,197,000.00. The Parties have agreed that the Aggregate Cash Payment Amount shall be attributable to each portion of the Litigation as follows:

1. \$5,000,000.00 for the Dockets addressing Qwest's compliance with Section 252(e) and Qwest's alleged interference with the 271 regulatory process;
2. \$47,000.00 for the Docket addressing Qwest's compliance with Section 252(e);
3. \$150,000 for the Docket dealing with Qwest's implementation of the new wholesale rates.

Qwest agrees to pay the Aggregate Cash Payment Amount to the State Treasurer within 30 days of the Effective Date of the Commission's Decision approving this Agreement.

### 2. VOLUNTARY CONTRIBUTIONS.

Qwest agrees to make Voluntary Contributions in an amount of \$6,000,000.00, or more as detailed below, in the following areas:

1. Section 501(c)(3) organizations or other State-funded programs involved in the areas of education and/or economic development;
2. Educational programs designed to promote greater understanding of telecommunications issues by Arizona consumers;
3. Infrastructure Investment, including investments in Unserved and Underserved areas in the State of Arizona. Any party to this Agreement may also propose other projects, which may include by way of illustration but are not limited to the following:

investments to further route diversity for homeland security and 911 services, investments that promote the general welfare or safety of consumers, or investments in advanced services. All parties shall have the right to argue in support of or opposition to any of the proposed projects before the Commission, if agreement cannot be reached. This provision is not intended to prohibit the Commission from designating specific projects.

Qwest's initial Voluntary Contribution shall be in the amount of \$6,000,000.00. This amount shall be subject to increase to the extent that the Minimum Settlement Amounts specified in Paragraphs 3 through 5 below are not reached, subject to Paragraph 6 below. Further, Qwest agrees that all such investments shall be in addition to any investments, construction or work already planned by Qwest.

Parties will request that the Commission determine the percentage allocation (e.g. from 0 to 100) of the Voluntary Contributions to be made for each of the three investment categories (i.e., education, economic development, and Infrastructure Investment) forthwith or the Commission may designate such responsibility to its Director of Utilities. The parties agree that, in order to have the process of allocations of voluntary contributions work as efficiently as possible, they will request that the Commission provide guidance on the allocation of funds among the categories prior to submission of the project lists by the parties. The Commission or Director of Utilities shall have the discretion to revise such allocations on a project by project basis to the extent Qwest has not already spent the allocated funds or has not contractually committed the funds to a project previously approved by the Commission. Additional amounts added through non-expenditure by Qwest of any portion of the Minimum Settlement Amounts in Paragraphs 3 through 5 below shall be handled in a like manner.

Qwest shall be required to provide a proposed list of projects in each investment category within 30 days of the Effective Date of the Commission's Decision approving the Settlement Agreement, or in the case of additional projects, its notification to the Commission that the Minimum Settlement Amounts have not been met. Any other signatory to this agreement may

provide a list of projects for any category within 60 days of the Effective Date, for Commission consideration and approval or in the case of additional projects, within 60 days of Qwest's notification to the Commission that the Minimum Settlement Amounts have not been met. Qwest shall also be required to provide Staff with such additional information on those projects as well as other projects identified by Staff, to allow Staff to make its determinations in an informed manner. Such information shall include data which allows Staff to establish that the projects are in addition to any construction and work already planned by Qwest.

Within each investment category, approved projects shall be determined by the mutual written agreement of the Director of the Commission's Utilities Division and Qwest's Arizona President within 180 days of the Effective Date of the Commission's Decision approving this Agreement. Allocation to additional projects as a result of Qwest's not meeting the Minimum Settlement Amounts specified in Paragraphs 3 through 5, shall be approved within 180 days of Qwest's notification to the Commission that the Minimum Settlement Amounts have not been met. In the event that the Director of the Commission's Utilities Division and Qwest's Arizona President cannot agree, the decision on such project shall be escalated to the Commission for decision. If the projects do not require any additional facilities, construction or development of new programs, Qwest shall make its investments in the approved projects within 60 days of their approval by the Director of the Commission's Utilities Division and Qwest's Arizona President, or approval by the Commission if agreement cannot be reached.

If an approved project requires Qwest to develop additional facilities or development of new programs, construction of such facilities and implementation of such programs shall commence no later than 180 days of the mutual agreement of the Director of the Commission's Utilities Division and Qwest's Arizona President, barring any circumstances outside of Qwest's control, including but not limited to, right-of-way ("ROW"), permits, environmental studies, archaeological studies, contract and/or lease negotiations or force majeure events, which shall

extend the above-referenced construction date. Any such extensions of time shall first be approved by the Commission's Director of Utilities.

For purposes of the Infrastructure Investment category, "Unserved Area" shall be defined as any area outside of Qwest's current exchange boundaries not currently served or not adequately served by any wireline telephone service provider and other areas as determined or approved by the Commission. "Underserved Area" shall be defined as any area within Qwest's current exchange boundaries but outside the Base Rate Area which does not have Qwest wireline telephone facilities available.

For purposes of "Underserved Areas", Qwest will be required to invest an incremental amount over and above what it otherwise would have invested (the base amount). Qwest agrees to provide Staff with the information required to verify that any of the proposed projects represent an incremental amount over and above what it would have invested otherwise. Qwest's current line extension and construction tariff would continue to apply to the development of infrastructure for the purpose of expending the Voluntary Contributions under this agreement.

### 3. DISCOUNT CREDITS

Qwest further agrees to issue a one-time credit to Eligible CLECs, equal to 10 percent of the total amount of services purchased under 47 U.S.C. Sections 251 (b) and (c) (as defined by the FCC for the relevant time period) through their interconnection agreements with Qwest or through Qwest's Statement of Generally Available Terms and Conditions ("SGAT") during the time period from January 1, 2001, through June 30, 2002. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between January 1, 2001 through June 30, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue such Discount Credits to all Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving the Settlement Agreement. To obtain the Discount Credit, an Eligible CLEC shall be required to execute a

release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The amount of the aggregate Discount Credits shall neither exceed \$8,910,000.00 nor be less than \$8,100,000.00. If the aggregate Discount Credits provided to Eligible CLECs are less than \$8,100,000.00 (Minimum Settlement Amount for purposes of this Paragraph 3), Qwest shall contribute a sum equal to the difference (i.e., \$8,100,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate Discount Credits are greater than \$8,910,000.00, Qwest shall provide the Discount Credits in the aggregate amount of \$8,910,000.00 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$8,910,000.00 equal to the percentage of that CLEC's claim for Discount Credits to the total claims of all CLECs for Discount Credits).

4. ACCESS LINE CREDITS.

Qwest further agrees to issue one-time credits to Eligible CLECs at the rate of \$2.00 per month for each UNE-P line or unbundled loop purchased by the CLEC from Qwest between July 1, 2001, through February 28, 2002, less amounts billed and collected by each Eligible CLEC from Qwest for terminating intraLATA toll on a monthly basis during that same time period. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between July 1, 2001 through February 28, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue these one-time Access Line Credits to all Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving the Settlement Agreement. To obtain the Access Line Credits, an Eligible CLEC shall be required to execute a release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the

agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The total amount of the Access Line Credits shall neither exceed \$660,000.00 nor be less than \$600,000.00. If the aggregate Access Line Credits provided to Eligible CLECs are less than \$600,000.00 (Minimum Settlement Amount for purposes of this Paragraph 4), Qwest shall contribute a sum equal to the difference (i.e., \$600,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate Access Line Credits issued exceed \$660,000.00, Qwest shall provide Access Line Credits in the aggregate amount of \$660,000.000 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$660,000.00 equal to the percentage of that CLEC's claim for Access Line Credits to the total claims of all CLECs for Access Line Credits).

The following procedures shall apply in determining the amount of Access Line Credits to be provided by Qwest to CLECs:

- A. Within 30 days of the Effective Date of the Commission's Decision Approving the Settlement Agreement, Qwest will inform each CLEC operating in Arizona that purchased UNE-P or unbundled loops from Qwest from July 2001 through February 2002, that it may be eligible to receive a per UNE-P or per unbundled loop credit for terminating IntraLATA switched access, to be offset by collections from Qwest for the CLEC's terminating switched access. Qwest's notice will include the procedures for CLECs to respond as specified below.
- B. Within 60 days of being informed by Qwest of its possible eligibility, each CLEC will submit to Qwest information and documentation supporting the following:
  - i. The average number of UNE-P lines and unbundled loops leased by the CLEC in service per month from July 2001 through February 2002.



- ii. The amounts the CLEC actually collected from Qwest for terminating intraLATA switched access for the UNE-P lines or unbundled loops in service, for each month from July 2001 through February 2002.
- C. Within 60 days of the date Qwest receives the information specified in Subparagraph B from the CLEC, Qwest shall inform the CLEC of the amount of the credit it is due (the \$2 per line per month amounts less the offset calculated based upon the above information).
  - i. Within 30 days of the date Qwest informs the CLEC of the amount of the credit it is due, Qwest shall credit to each CLEC that has executed a release of any and all claims against Qwest the amount that the CLEC is actually entitled to receive.
- D. If a CLEC fails to reasonably comply by not providing Qwest with any of the information necessary to determine the appropriate amount of credit, the CLEC will not be entitled to receive credits under this Paragraph. Notwithstanding the above, if the information is in the possession of Qwest, Qwest shall not require the CLEC to provide it again in order to receive the credit. If the information is not available to either Qwest or the CLEC, the CLEC will receive the amount that Qwest actually paid Eschelon each month, which is \$0.96 per line per month. Any disputes arising from this subpart shall be submitted to the Commission Staff for resolution.

5. UNE-P CREDITS.

Qwest further agrees to provide one-time credits to Eligible CLECs against future purchases for each month Qwest did not provide accurate daily usage information. These UNE-P credits shall be made at the rate of \$13 per month for each UNE-P line purchased by CLECs through their interconnection agreements with Qwest or Qwest's SGAT from November 1, 2000,

through June 30, 2001 and \$16 per month for each UNE-P line purchased by CLECs through their interconnection agreements with Qwest or through Qwest's SGAT from July 1, 2001, through February 28, 2002, less the amounts actually billed by these CLECs to interexchange carriers for switched access on an aggregate basis for such UNE-P lines during these monthly periods divided by the average number of UNE-P lines in service for that month. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between November 1, 2000 through February 28, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue the UNE-P Credits to Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving this Settlement Agreement. To obtain the UNE-P Credits, an Eligible CLEC shall be required to execute a release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The total amount of the UNE-P Credits shall neither exceed \$550,000.00 nor be less than \$500,000.00. If the aggregate UNE-P Credits issued to Eligible CLECs are less than \$500,000.00 (Minimum Settlement Amount for purposes of this Paragraph 5), Qwest shall contribute a sum equal to the difference (i.e., \$500,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate UNE-P credit exceeds \$550,000.00, Qwest shall provide UNE-P Credits in the aggregate amount of \$550,000.00 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$550,000.00 equal to the percentage of that CLEC's claim for UNE-P Credits to the total claims of all CLECs for UNE-P Credits).

The following procedures shall apply to determining the amount of UNE-P Credits to be provided by Qwest to the CLECs:

- A. Within 30 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest will inform each CLEC operating in Arizona that leased UNE-P from Qwest from November 2000 through February 2002, that it may be eligible to receive a per UNE-P Credit for each month Qwest did not provide accurate daily usage information, to be offset by actual billings to interexchange carriers ("IXCs") for switched access. Qwest's notice will include the procedures for CLECs to respond as specified below.
- B. Within 60 days of being informed by Qwest of its possible eligibility, each CLEC will submit to Qwest information and documentation supporting the following:
- i. The months from November of 2000 to February, 2002 that the CLEC believes it did not receive accurate daily usage information from Qwest.
  - ii. The reasons that the CLEC believes that the daily usage information was inaccurate.
  - iii. The average number of UNE-P lines leased by the CLEC in service for each such month that it believes it did not receive accurate daily usage information.
  - iv. The aggregate amount the CLEC actually billed interexchange carriers for switched access originated and terminated through such UNE-P lines for each month in which the CLEC believes Qwest's daily usage information was inaccurate.
- C. Within 60 days of the date Qwest receives the information specified in Subparagraph B from the CLEC, Qwest shall inform the CLEC of the amount of the credit it is due (the \$13 or \$16 per line per month amounts less the offset calculated based upon the above information) or the reasons that Qwest believes that the DUF files that it provided to the CLEC were accurate.

- i. Within 30 days of the date Qwest informs the CLEC of the amount of the credit it is due, Qwest shall credit to each CLEC that has executed a release of any and all claims against Qwest the amount that the CLEC is actually entitled to receive after adjusting for any offsets attributable to the CLEC; or
  - ii. If Qwest has informed the CLECs that it believes that the DUF files were accurate, the CLEC shall have 30 days to respond to Qwest. Qwest shall then have the burden of proving that the DUF files were accurate.
- D. If a CLEC fails to reasonably comply by not providing Qwest with any of the information necessary to determine the appropriate amount of credit, the CLEC will not be entitled to receive credits under this Paragraph. Notwithstanding the above, if the information is in the possession of Qwest, Qwest shall not require the CLEC to provide it again in order to receive the credit. Any disputes arising from this subpart shall be submitted to the Commission Staff for resolution.

6. ADDITIONAL VOLUNTARY CONTRIBUTIONS.

Qwest agrees that if the credits issued under Paragraphs 3 through 5 above, are less than the respective Minimum Settlement Amounts required under these same Paragraphs of this Agreement, Qwest shall make an additional voluntary contribution in the manner provided under Paragraphs 2 and 3 through 5 above and this Paragraph 6 in an amount equal to the remaining respective Minimum Settlement Amounts for the Discount, Access Line and UNE-P credits not issued to satisfy the terms of this Agreement. Qwest may deduct amounts attributable to Eligible CLECs that do not execute a release of any and all claims against Qwest from the amount of Discount Credits, Access Line Credits, and/or UNE-P Credits owed under this Agreement, for a period of one year from the Effective Date of the Commission Decision approving the Settlement Agreement. At the expiration of one year from the Effective Date of the Commission Decision

approving this Settlement Agreement, Qwest shall make additional Voluntary Contributions in the manner provided under Paragraphs 2 and 3 through 5 above in amounts equal to the remaining respective Minimum Settlement Amounts for the Discount, Access Line and UNE-P Credits not issued to satisfy the terms of this Agreement. Qwest may also deduct any amounts due under Paragraphs 3 through 5 of this Agreement for any individual CLEC which brings a claim within one year from the Effective Date of the Commission Decision approving the Settlement Agreement against Qwest arising out of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket). Qwest shall make the additional contributions required under this paragraph no later than 90 days from the submission of its final written report required in Paragraph 7 following.

7. REPORT ON CREDITS.

Within 240 days from the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest shall submit a written report to Staff demonstrating that it has issued the Discount Credits, Access Line Credits, and UNE-P Credits in the manner provided in Paragraphs 3 through 5 above. Qwest shall provide any additional reasonable information as may be requested by the Staff in determining that such credits were issued in a proper and timely manner. CLEC specific information shall be submitted as confidential information. If not all CLECs have executed a release of any and all claims against Qwest, Qwest shall submit a final written report 60 days after the one-year period specified in paragraph 6 above has expired.

8. RETENTION OF INDEPENDENT MONITOR.

Within 90 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest agrees to retain and thereafter pay for an independent third-party monitor, selected by the Director of the Commission's Utilities Division with input from Qwest, to conduct an annual review of the Qwest Wholesale Agreement Review Committee for a period

of three years from the Effective Date of the Commission's Decision approving the Settlement Agreement. The scope of the annual independent review shall be determined by the Staff with input from Qwest and interested parties. The Monitor must be able to demonstrate that he or she can offer an independent opinion, that no conflicts of interest will result from his or her selection and that he or she has not testified in a docket in Arizona involving Qwest in the past three years. Qwest may terminate its retention of the Monitor prior to the end of the three year period only upon the written consent of the Director of the Commission's Utilities Division.

9. COMPLIANCE TRAINING.

Qwest agrees to continue its Compliance Training Program for existing and new employees in the Local Network Services, Wholesale Markets, Product Management, Public Policy, and Law Departments for a minimum period of three years from the Effective Date of the Commission's Decision approving the Settlement Agreement. The Compliance Training Program is an internal web-based training program on compliance with Section 252(e) of the Act.

10. OPT-IN FOR ELIGIBLE CLECS.

Any CLEC currently certificated and operating in Arizona may opt-in to the non-monetary provisions relating to Section 251(b) and (c) services of any agreement listed on Table 1 of the pre-filed Direct Testimony of Marta Kalleberg in Docket No. RT-00000F-02-0271. In exercising opt-in, however, the CLEC must satisfy the criteria under Section 252(i), including but not limited to, assuming any and all related terms in the agreement it chooses.

If a dispute between Qwest and the CLEC arises regarding the eligibility of the CLEC to opt-in to certain provisions of any agreement, Qwest and/or the CLEC may submit a request for a Commission determination in Phase II of Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act).

11. WITHDRAWAL OF FEDERAL APPEAL.

Qwest further agrees to voluntarily move to dismiss with prejudice its appeal of the Commission's Opinion and Order issued on June 12, 2002, Decision No. 64922, in *Investigation Into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, Phase II, ACC Docket No. T-00000A-00-0194 that it filed in the United States District Court for the District of Arizona (Case No. CIV 02-1626 (PHX-SRB), captioned *Qwest Corporation v. Arizona Corporation Commission, et al.* ("the Appeal") within 30 days of the Effective Date of the Commission's Decision approving the Settlement Agreement.

Until its filing for dismissal is made with the Court, Qwest agrees to seek whatever extensions of time are necessary and to inform the Court that a settlement has been entered into with the Commission that would result in dismissal of the Appeal. The Staff agrees to support Qwest's motion to dismiss the Appeal, and any extensions of time which Qwest requests.

Each party to the Appeal, however, will be required to bear its own attorneys' fees and costs incurred therein.

12. RETENTION OF CONSULTANT FOR IMPLEMENTATION OF WHOLESALE RATES.

Qwest further agrees that within 90 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest shall retain and thereafter pay for an independent third-party consultant, selected by the Director of Utilities with input from Qwest. Qwest's obligation to pay the billings of the third party consultant shall be limited to a total payment of no more than \$150,000. The scope of the Consultant's work shall be determined by the Commission Staff with input from Qwest and interested parties. The Consultant shall provide independent assessments to the Commission and its Staff of improvements made to automate Qwest's wholesale rate implementation processes. The Consultant shall provide

recommendations on further process changes with the goal of mechanizing of Qwest's wholesale implementation processes, to the extent technologically and economically feasible. Qwest agrees to meet with Staff to discuss the economic and practical feasibility of implementing the recommendations contained in such reports. Qwest shall retain the Consultant for a period of three years from the Effective Date of the Commission's Decision approving this Settlement Agreement but may terminate its retention of the consultant prior to the end of the three year period only upon the written consent of the Director of the Commission's Utilities Division.

13. COST DOCKET GOVERNANCE TEAM.

Qwest agrees to continue its Cost Docket Governance Team for a period of three years from the Effective Date of the Commission's Order approving the Settlement Agreement. The Cost Docket Governance Team is a team comprised of executive level personnel from organizations within Qwest with primary involvement and responsibility for wholesale cost docket implementation in Arizona. Those organizations include: Wholesale Product Management, Wholesale Service Delivery, and Public Policy. The purpose of the team is to provide both an oversight role and to serve as an escalation point for issues or obstacles that may arise during the implementation process. Qwest may dissolve the OSC Governance Team before the end of the three year period only with the Director of Utilities' written consent.

14. NOTIFICATION OF WHOLESALE RATE CHANGES TO COMMISSION AND CLECS.

Qwest further agrees to provide prompt written notification to its wholesale customers in Arizona of changes in their wholesale rates upon the occurrence of any of the following events: (a) the issuance of a final Commission Decision changing wholesale rates, which contains updated wholesale rate sheets; and (b) the appearance of the new Commission-approved wholesale rates on customer bills. Qwest shall promptly provide information to the Commission



and Staff concerning the status and time frames for implementation of future changes in wholesale rates.

Qwest shall meet and confer with Staff one year from the Effective Date of the Commission's Decision approving the Settlement Agreement concerning: (a) the status of Qwest wholesale rate implementation in Arizona; (b) current industry expectations relative to wholesale rate implementation; and (c) Qwest business practices relative to wholesale rate implementation and the negotiation of interconnection agreements with other Arizona carriers.

15. WHOLESALE RATE IMPLEMENTATION.

Qwest shall file its initial compliance filing including a numeric price list within fourteen (14) days of a recommended opinion and order. If Qwest determines that additional time is necessary to complete the filing based on good cause, such as the absence of essential information in the recommended opinion and order to permit numeric wholesale rates to be calculated or a need to restructure the applicable cost model, Qwest shall apply to the Commission for an extension of time to make the compliance filing. Qwest shall implement prospectively all ordered wholesale rates within 60 days from the effective date of the final Commission Decision approving rates and setting forth the numeric wholesale rates to be implemented. Qwest will use its best efforts to determine the numeric rates resulting from the Commission's modifications to the recommended opinion and order in a timely fashion, for inclusion in a final Commission Decision approving new wholesale rates and setting forth numeric wholesale rate changes. Within 60 days from the effective date of the final Commission Decision approving new wholesale rates and setting forth new numeric wholesale rates to be implemented, Qwest shall perform all necessary back-billing back to the effective date of the Commission's Order setting forth the new numeric rates. Qwest may petition the Commission for additional time to implement these rates in the event there are circumstances

beyond Qwest's control that necessitate additional time for implementation, and the Commission shall not withhold approval of such request upon good cause shown.

16. FILING OF SETTLEMENT AGREEMENTS.

Commencing on the Effective Date of the Commission's Decision approving the Settlement Agreement, Qwest shall docket, within ten days of execution, with the Commission any settlement agreements reached in Commission dockets of general application. On December 31, 2003 and for three years from the Effective Date of the Commission's Order approving the Settlement Agreement, Qwest shall submit to Staff a written statement attesting to the fact that Qwest either has not reached any settlement agreements in Commission dockets of general application for the applicable year, or has docketed such settlement agreements with the Commission.

17. EFFECTIVE DATE.

The "Effective Date" as used in this Agreement shall mean the date by which the Commission's Order approving this Settlement Agreement becomes final by the expiration of the periods set forth in A.R.S. Section 40-253 for the filing and consideration of an application for rehearing.

18. DISMISSAL OF LITIGATION.

Issuance of the Commission's Decision Approving this Settlement Agreement shall constitute full and final resolution of the Litigation, and the Decision shall include an order terminating and closing Phase I of Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act); Docket No. T-00000A-97-0238 (271 Subdocket) (Qwest's Interference with the 271 Regulatory Process); and Docket No. T-01051B-02-0871 (OSC Regarding Qwest's Failure to Implement Wholesale Rates in a Timely Manner).

19. COMMISSION APPROVAL AND SEVERABILITY.

Each provision of this Agreement is in consideration and support of all other provisions, and expressly conditioned upon acceptance and approval by the Commission without change. Unless the Parties to this Agreement otherwise agree, in the event that the Commission does not accept and approve this Agreement according to its terms, then it shall be deemed withdrawn by the Parties and the Parties shall be free to pursue their respective positions in the Litigation without prejudice.

20. COMPROMISE.

This Agreement represents the Parties' mutual desire to compromise and settle all disputed claims at issue in the Litigation in a manner consistent with the public interest and based upon the pre-filed testimony and exhibits and the evidentiary record developed in the Litigation. This Agreement represents a compromise of the positions of the Parties. Acceptance of this Agreement is without prejudice to any position taken by any party in the Litigation and none of the provisions may be referred to, cited or relied upon by any other party in any fashion as precedent or otherwise in any proceeding before this Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purposes and results of this Agreement.

21. PRIVILEGED AND CONFIDENTIAL COMMUNICATIONS.

All negotiations relating to or leading to this Agreement are privileged and confidential, and no party is bound by any position asserted in negotiations, except to the extent expressly stated in this Agreement. As such, evidence of conduct or statements made in the course of negotiation of this Agreement are not admissible as evidence in any proceeding before the Commission, any other regulatory agency or any court.

22. COMPLETE AGREEMENT.

This Agreement represents the complete agreement of the Parties. There are no understandings or commitments other than those specifically set forth herein. The Parties acknowledge that this Agreement resolves all issues that were raised in the Litigation and is a complete and total settlement between the Parties.

23. SUPPORT AND DEFEND.

Each Signatory Party will support and defend this Agreement and any order entered by the Commission approving this Agreement before the Commission or other regulatory agency or before any court in which it may be at issue.

24. APPEALS AND CHANGE OF LAW.

The Parties believe that this Settlement Agreement is in the public interest and lawful. Nothing herein shall be construed as prohibiting Qwest from obtaining a refund of the Cash Payment from the State Treasury made pursuant to Paragraph 1 of the Settlement Agreement, or from conditioning the tender of the Cash Payment to the State Treasury upon the right to a refund, if the court of the highest jurisdiction to which the matter is appealed should ultimately find in a final, nonappealable order that the Settlement Agreement is unlawful or that the Commission Decision approving the Settlement Agreement is reversed. If such condition precludes the acceptance of the Cash Payment by the State Treasury, then the Cash Payment under Paragraph 1 of this Settlement Agreement shall be placed in an interest-bearing escrow account at a financial institution that is mutually agreed to by Staff and Qwest. If no appeal of the Commission Decision approving the Settlement Agreement is filed or if the Court ultimately enters a final, nonappealable order finding the Settlement Agreement is lawful or the

Commission Decision approving the Settlement Agreement is affirmed, the principal and interest contained in the escrow account shall be paid to the State Treasury without further condition. If the court of the highest jurisdiction to which the matter is appealed ultimately finds in a final, nonappealable order that the Settlement Agreement is unlawful or the Commission Decision approving the Settlement Agreement is reversed, the principal and interest contained in the escrow account shall be returned to Qwest. It is further understood that if the court of the highest jurisdiction to which the matter is appealed should ultimately find in a final, nonappealable order that the Settlement Agreement is unlawful or the Commission Decision approving the Settlement Agreement is reversed, Qwest will have no further obligation to make any remaining Voluntary Contributions pursuant to Paragraph 2 of the Settlement Agreement. If a court of lower or intermediate jurisdiction enters an order finding the Settlement Agreement is unlawful or that the Commission's Decision approving the Settlement Agreement shall be reversed, Qwest's obligations pursuant to Paragraphs 1 and 2 will be suspended until the entry of a final, nonappealable order of a higher court finding the Settlement Agreement is lawful or that the Commission Decision approving the Settlement Agreement is affirmed. The Staff shall not oppose Qwest obtaining from the State Treasury a refund of the Cash Payment or Qwest conditioning the payment of the Cash Payment to the State Treasury on the right to a refund, all as set forth in this Paragraph 24. Except as specifically provided in this Paragraph 24, Qwest shall not otherwise place conditions on the payment of the Cash Payment to the State Treasury. In the event that the State Treasury does not accept Qwest's conditional tender of the Cash

Payment, Qwest agrees to negotiate in good faith with the State Treasury in an effort to reach mutually-acceptable conditions for tender of the Cash Payment prior to placing the Cash Payment in an escrow account pursuant to this Paragraph.

DATED this 25<sup>th</sup> day of July, 2003.

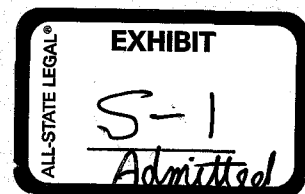
ARIZONA CORPORATION COMMISSION

BY: 

QWEST CORPORATION

BY: 

TL



BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
Chairman  
JIM IRVIN  
Commissioner  
WILLIAM A. MUNDELL  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
MIKE GLEASON  
Commissioner

IN THE MATTER OF QWEST  
CORPORATION'S COMPLIANCE WITH  
SECTION 252(e) OF THE  
TELECOMMUNICATIONS ACT OF 1996

) DOCKET NO. RT-00000F-02-0271  
)  
)  
)  
)

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S  
COMPLIANCE WITH SECTION 271 OF  
THE COMMUNICATIONS ACT OF 1996

) DOCKET NO. T-00000A-97-0238  
)  
)  
)  
)  
)

ARIZONA CORPORATION COMMISSION  
Complainant,

) DOCKET NO. T-01051B-02-0871  
)  
)  
)  
)  
)

V.  
QWEST CORPORATION

) Respondent  
)  
)  
)  
)  
)

DIRECT

TESTIMONY

OF

ERNEST G. JOHNSON

UTILITIES DIRECTOR

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

AUGUST 14, 2003

## EXECUTIVE SUMMARY

Mr. Johnson provides policy testimony concerning process, recitals, cash payment, voluntary contributions, provisions to benefit competitors, withdrawal of the federal wholesale pricing appeal, appeals of the Commission's decision on the global settlement, ongoing compliance and public interest. Specifically, Mr. Johnson presents testimony describing how the settlement process arose, Staff's goals with respect to settlement, general policy and background discussions concerning cash payment, voluntary contributions, federal wholesale pricing appeal, appeals of the Commission's decision on the global settlement, ongoing compliance and public interest.

Mr. Johnson shares Staff's strongly felt view that the conduct at issue (or similar conduct) should not be repeated and that a reasonably sufficient deterrent be established. He further states Staff's belief that the commitments expressed in the recitals, in conjunction with the monetary penalties and contempt possibly should serve to assist Qwest in ensuring that it conducts its business activities with integrity, honesty, in conformance with Arizona laws and regulations and with respect for the regulatory processes of the Commission.



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**INTRODUCTION**

**Q. Please state your name, occupation, and business address.**

A. My name is Ernest G. Johnson, Arizona Corporation Commission Utilities Director, 1200 West Washington Street, Phoenix, Arizona 85007.

**Q. Briefly describe your responsibilities as Utilities Director.**

A. I am responsible for the day to day operations of the Utilities Division, including policy development, case strategy and overall division management.

**Q. Please summarize your educational background and professional experience.**

A. In 1979 and 1982 respectively, I earned Bachelor of Science and Juris Doctorate degrees, both from the University of Oklahoma. I have been involved in the regulation of public utilities since 1986. I was employed by the Oklahoma Corporation Commission in 1986 in various legal capacities. In 1993, I was named acting Director and served in that position until mid 1994. I served as permanent Director from mid 1994 until October 2001. While serving in these capacities, I have participated in numerous regulatory proceedings including providing policy analysis concerning Electric Restructuring before the Oklahoma Corporation Commission and Oklahoma State Legislature. In October 2001, I joined the Arizona Corporation Commission as Utilities Director.

**OVERVIEW**

**Q. Did you participate in discussions which gave rise to the Settlement Agreement between Qwest and Staff?**

A. Yes, I did. I was part of the Staff negotiating team.

1 **Q. What is the purpose of your pre-filed direct testimony in this case?**

2 A. My testimony is offered to provide background regarding the settlement process and to  
3 share the Staff policy perspective regarding the Settlement Agreement.  
4

5 **ISSUES**

6 **Q. What specific issues will your testimony address?**

7 A. Specifically, my testimony will focus on the following areas:

- 8 • Process
- 9 • Recitals
- 10 • Cash payment
- 11 • Voluntary Contribution
- 12 • Provisions to Benefit Competitors
- 13 • Federal Wholesale Pricing Appeal Dismissal
- 14 • Appeal of the Commission's Decision on the Global Settlement
- 15 • Ongoing Compliance
- 16 • Public Interest
- 17

18 **SETTLEMENT PROCESS**

19 **Q. Please discuss the settlement process.**

20 A. I was contacted by Mr. David Zeigler of Qwest who inquired whether Staff might be  
21 interested in some type of global resolution of certain outstanding dockets involving  
22 Qwest.

23 Specifically, Mr. Zeigler was interested in resolving dockets # RT-00000F-02-0271  
24 (Qwest compliance with section 252(e) of the Federal Act), T-00000A-97-238 (the 271  
25 sub docket which addresses allegations that Qwest interfered with the 271 regulatory  
26 process) and T-01051-02-0871 (the order to show cause "OSC" for not implementing

1 Commission approved wholesale rates on a timely basis). These dockets are collectively  
2 referred to in the Settlement Agreement as the "Litigation".  
3

4 **Q. What was your response to Mr. Zeigler's inquiry?**

5 A. I responded that Staff would be open to a serious desire by Qwest to resolve the disputed  
6 issues in the above referenced dockets.  
7

8 **Q. What did you mean when you utilized the term "serious"?**

9 A. I was simply attempting to convey the message that Staff was not interested in having  
10 discussions with Qwest which were not designed to significantly address the issues raised  
11 in the Litigation.  
12

13 **Q. Did you have subsequent discussions with Mr. Zeigler?**

14 A. Yes, I did. Mr. Zeigler and I spoke on numerous occasions, principally by telephone.  
15

16 **Q. What was the general nature of those conversations?**

17 A. Basically, we discussed the desire of Qwest and the Staff to appropriately address the  
18 issues raised in the litigation and concluded that an agreed upon solution would probably  
19 be beneficial.  
20

21 **Q. Why would an agreed upon solution appear more beneficial?**

22 A. Litigation has risks; the outcome is ultimately determined by someone else. There are  
23 times where litigants believe that it would be more preferable to have certainty instead of  
24 uncertainty.  
25

26 **Q. Was this a case where the litigants desired to have certainty instead of uncertainty?**

27 A. Yes.

**TERMS AND CONDITIONS**

**Q. In your discussions with Mr. Zeigler did you and he discuss issues, terms and conditions that would need to be addressed if settlement were to occur?**

**A. Yes, we did.**

**Q. Were these discussions intended to be confidential?**

**A. Yes, they were.**

**Q. Were other Staff members' participants in these discussions?**

**A. Yes, our principal staff negotiating team consisted of Elijah Abinah (Assistant Director), Matt Rowell (Chief Energy & Telecom), Maureen Scott (Legal Counsel) and myself.**

**Q. What about the Qwest team?**

**A. Members of the Qwest negotiating team included Mr. Zeigler, Mr. Tim Berg and Mr. Todd Lindy (both legal counsel to Qwest).**

**OUTLINE OF PRINCIPLES**

**Q. Mr. Johnson what was the outcome of the discussion between Staff and Qwest?**

**A. The result was an "Outline of Principles" to which Staff and the company could agree.**

**Q. You mentioned an "Outline of Principles"?**

**A. Yes.**

**Q. Was this "Outline of Principles" intended to be a global settlement?**

**A. No, the terms and conditions set forth in the outline were simply an expression of general concepts that were acceptable to Staff and Qwest, but it was clearly recognized by both Qwest and Staff that there existed numerous other issues and it was both necessary and appropriate to have discussion with other parties to the litigation.**

1    **Q.    Mr. Johnson, to your knowledge was Qwest having discussions with any other party**  
2       **to the litigation?**

3    A.    Yes, Qwest had engaged the Residential Utility Consumer's Office ("RUCO") in dialogue  
4       concerning resolution of the Litigation.

5  
6    **Q.    What happened after Staff and Qwest reached an agreement on the "Outline of**  
7       **Principles"?**

8    A.    As I recall, the "Outline of Principles" was made available to other parties.

9  
10   **Q.    Mr. Johnson were there meetings with other parties after transmission of the**  
11       **"Outline of Principles"?**

12   A.    Yes, I believe there were two (2) meetings involving various parties to the Litigation.

13  
14   **Q.    Do you happen to recall who was represented at those meetings, other than Qwest**  
15       **and Staff?**

16   A.    I recall that AT&T, MTI, MCI, RUCO, and Time Warner were participants in one or more  
17       of these meetings.

18  
19   **Q.    What was the purpose of the meetings?**

20   A.    The meetings were intended to provide an opportunity for discussion of the "Outline of  
21       Principles" and to address any other issues, in the hopes of arriving at an agreement that  
22       would be acceptable by all parties.

23  
24   **Q.    Did the meetings produce an agreement acceptable to all parties?**

25   A.    Unfortunately no, the meetings produced robust discussions and debate, but in the end  
26       they did not produce an agreement acceptable to all parties.

1    **Q.    Mr. Johnson, were the "Outline of Principles" modified as a result of comments**  
2           **made by other parties?**

3    A.    Yes, the outline was intended to serve as a basis for subsequent agreement. It was not a  
4           final agreement. As I recall, during the meetings and subsequent thereto, Staff discussed,  
5           proposed and made modifications to the "Outline of Principles".  
6

7    **Q.    What happened next?**

8    A.    Various parties indicated either their intent not to or inability to become signatories to an  
9           agreement which contained terms similar to those in the outline. Thereafter, Qwest and  
10          Staff continued to engage in discussions which ultimately gave rise to the Settlement  
11          Agreement.  
12

13   **Q.    Mr. Johnson, do you have any final thoughts about the settlement process?**

14   A.    Yes, I would like to thank the various entities that participated in these discussions.  
15          While it is regrettable that a global settlement was not obtained, I believe the settlement  
16          document reflects reasonable efforts to address many of the concerns raised by various  
17          parties.  
18

19   **GOALS**

20   **Q.    Mr. Johnson what were Staff's goals during the negotiations?**

21   A.    It was Staff's goal that the conduct at issue in the Litigation not be repeated and that a  
22          reasonably sufficient deterrent be established.  
23

24   **Q.    Could you be more specific?**

25   A.    Yes, specifically it was important to Staff that Qwest conduct its business in a manner  
26          which demonstrated respect for the regulatory process, specifically as it related to the 271

1 regulatory processes. It was also important to Staff that Qwest faithfully and timely  
2 implement commission orders and decisions.

3 Finally, it was important that Qwest make all necessary and required filings mandated by  
4 section 252(e) of the Telecom Act of 1999.

5 In summary, Staff desired a commitment that Qwest would conduct all of its business  
6 affairs before the ACC and in Arizona with integrity, honesty, in conformance with  
7 Arizona laws and regulations and with respect for the regulatory process of the  
8 Commission. It was Staff's view that such a commitment would substantially reduce the  
9 probability that the concerns alleged in the litigation would reoccur.

10  
11 **Q. Mr. Johnson, could you please explain the purpose of the recitals set forth in the**  
12 **settlement agreement.**

13 **A.** Yes, as settlement discussions continued, it became clear to staff that any final settlement  
14 agreement would need to explicitly address the corporate behavior of Qwest. Staff was  
15 particularly concerned that Qwest recognize the serious concerns that existed regarding its  
16 actions in matters pending before the ACC. Staff unequivocally, felt that Qwest had  
17 inappropriately interfered with the 271 regulatory process, that it had intentionally not  
18 filed certain interconnection agreements entered into with McLeod & Eschelon with the  
19 Commission for approval as required under 47 U.S.C. 252(e) and that it had not  
20 implemented the new rates ordered by the Commission in Decision 64922 in a timely  
21 manner. Therefore, Staff requested and Qwest agreed that an expressed commitment  
22 regarding future conduct of Qwest was both necessary and appropriate.

23  
24 **DISCUSSION OF RECITALS**

25 **Q. Could you please summarize the recitals?**

26 **A.** Yes, basically the recitals set forth the following:



- 1 • Qwest's commitment to conduct "all" of its business affairs in the State of Arizona
- 2 with integrity, honesty, in conformance with Arizona laws and regulations and with
- 3 respect for the regulatory processes of the Commission.
- 4 • Qwest's intention to comply fully in the future with all written laws, rules, regulations
- 5 and orders governing Qwest's conduct.
- 6 • Qwest's commitment that the company and its official representatives will not engage
- 7 in fraudulent, deceptive or intentionally unlawful conduct in any matters pending
- 8 before the ACC.
- 9

10 In Staff's opinion, taken as a whole the recitals express an intention by Qwest to eliminate

11 the type behavior which necessitated the filing of the Litigation.

12 This expressed intention recognizes that Qwest's failure to abide by its commitment may

13 be punishable through a contempt proceeding.

14

15 **CASH PAYMENT**

16 **Q. Mr. Johnson, does the Settlement Agreement provide for a cash payment to be made**

17 **by Qwest?**

18 **A. Yes.**

19

20 **Q. What is the amount of the cash payment?**

21 **A. The cash payment amount is \$5,197,000.00.**

22

23 **Q. How was the cash payment determined?**

24 **A. The cash payment amount was the result of negotiation and compromise.**

1 **Q. Could you please elaborate?**

2 A. Yes, Staff was interested in a financial penalty that would be substantial and which would  
3 serve as a deterrent to Qwest.

4  
5 **Q. Mr. Johnson could the amount of the cash penalty been greater?**

6 A. Yes, that is possible, but the cash penalty is only one component of the result sought by  
7 Staff.

8  
9 **VOLUNTARY CONTRIBUTIONS**

10 **Q. Mr. Johnson, the settlement also provides for a minimum of \$6,000,000.00 be set**  
11 **aside for various voluntary contributions, is that correct?**

12 A. Yes, it does.

13  
14 **Q. What were the policy considerations associated with this section of the settlement?**

15 A. During the course of the negotiations it became clear that Qwest and Staff would not reach  
16 agreement on an aggregate cash payment significantly greater than the amount discussed  
17 previously. It was also clear that the value of that cash payment was inadequate from  
18 Staff's perspective. Qwest and Staff discussed various other items in an effort to resolve  
19 Staff's concerns. Ultimately, the parties concluded that the public could benefit through  
20 the establishment of certain voluntary contributions.

21  
22 **Q. How will the minimum \$6,000,000.00 voluntary contributions be utilized?**

23 A. In essence, the \$6,000,000.00 sum could be utilized in the following areas:

- 24 1. Section 501(c) (3) organizations or other state-funded programs involved in the  
25 areas of education and/or economic development.  
26 2. Educational programs designed to promote greater understanding of  
27 telecommunications issues by Arizona consumers.

1           3. Infrastructure investment, including investments in unserved and underserved  
2           areas in the state of Arizona.

3  
4       **Q.    Mr. Johnson, are the areas referenced above intended to prohibit the Commission**  
5       **from designating specific projects?**

6       A.    No, that was certainly not the intent of the parties.

7  
8       **Q.    Mr. Johnson, what is the minimum value of the settlement?**

9       A.    The minimum value, (inclusive of CLEC credits of approximately \$9.2 million) would  
10       exceed twenty (\$20) million dollars in total.

11       **PROVISIONS TO BENEFIT COMPETITORS**

12       **Q.    Mr. Johnson, does the Settlement Agreement contain provisions designed to benefit**  
13       **Qwest's competitors?**

14       A.    Yes, Sections 3, 4 and 5 of the Settlement Agreement provide for discounts and credits for  
15       eligible CLECs. In addition, Section 10 of the Settlement Agreement allows CLECs to  
16       opt-in to the non-monetary provisions relating to Section 251(b) and (c) services of any  
17       agreement listed on Table 1 of the prefiled Direct Testimony of Marta Kalleberg in  
18       Docket No. RT-00000F-02-0271.

19  
20       **WITHDRAWAL OF FEDERAL WHOLESALE PRICING APPEAL**

21       **Q.    Mr. Johnson, section eleven (11) of the Settlement Agreement is entitled**  
22       **"WITHDRAWAL OF FEDERAL WHOLESALE PRICING APPEAL", could you**  
23       **briefly explain the purpose of this section?**

24       A.    Yes, the purpose of this section is simply to specifically express and memorialize the  
25       intent of Qwest to dismiss its federal lawsuit against the Commission arising out of Phase  
26       II of the ACC's wholesale pricing proceeding Docket No. T-00000A-00-0194 (Decision  
27       No. 64922).

1     **Q.     Why is this issue part of the settlement?**

2     A.     Staff felt that it was appropriate to consider other additional issues in its assessment of  
3             settlement value. Staff believes this provision is also of benefit to Qwest's competitors  
4             since it provides for more certainty with respect to wholesale service rate levels.

5  
6     **Q.     Mr. Johnson, could you briefly explain the thinking behind section twenty-four (24)**  
7             **entitled "APPEALS AND CHANGES OF LAW"?**

8     A.     Yes, basically the parties were attempting to deal with uncertainty. During the course of  
9             the negotiations the parties wanted to ensure good faith performance of the underlying  
10            terms, while recognizing the possibility that any resulting commission decision approving  
11            the settlement could be appealed. Frankly, the negotiations regarding this section were  
12            quite intense and very involved. Unfortunately, it was necessary to contemplate various  
13            scenarios and to appropriately provide for treatment of various possible outcomes.  
14            In essence, during the settlement discussions the parties were unsure what steps would be  
15            required in order to make the conditional payment and to provide for its return upon the  
16            happening of certain events as expressed in section twenty-four (24) of the settlement  
17            agreement. These concerns only arise in the context of an appeal of a commission  
18            decision approving the settlement.

19  
20     **ONGOING COMPLIANCE**

21     **Q.     Mr. Johnson, in addition to the recitals, does the Settlement Agreement contain other**  
22             **provisions to ensure that Qwest does not engage in the same type of behavior in the**  
23             **future?**

24     A.     Yes, Sections 8, 9, 12, 13, 14, 15 and 16 all contain measures which are designed to  
25             ensure that Qwest does not engage in the same type of conduct which is the subject of the  
26             Litigation in the future.

1 **PUBLIC INTEREST**

2 **Q. Mr. Johnson, do you believe the settlement agreement is in the public interest?**

3 A. Yes, I do.  
4

5 **Q. Please explain.**

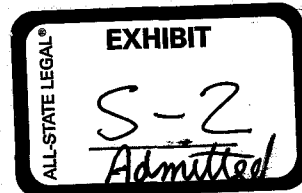
6 A. As stated previously, Staff strongly felt that the conduct at issue (or similar conduct) not  
7 be repeated and that a reasonably sufficient deterrent be established. Staff believes that  
8 the commitments expressed in the recitals, in conjunction with the monetary penalties and  
9 contempt possibility should serve to assist Qwest in ensuring that it conducts its business  
10 activities with integrity, honesty, in conformance with Arizona laws and regulations and  
11 with respect for the regulatory processes of the commission.  
12

13 **Q. Mr. Johnson is there anything further that you would like to add?**

14 A. Yes, through the settlement agreement Qwest has agreed to a variety of concessions  
15 (monetary and non-monetary) including payments to the state, voluntary contributions,  
16 opportunities for CLECs to obtain monetary relief, independent monitoring and  
17 withdrawal of Qwest's appeal of Commission Decision No. 64922. Staff believes this  
18 result to be consistent with the interests of the public.  
19

20 **Q. Does this conclude your testimony?**

21 A. Yes, it does.



BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
Chairman

JIM IRVIN  
Commissioner

WILLIAM A. MUNDELL  
Commissioner

JEFF HATCH-MILLER  
Commissioner

MIKE GLEASON  
Commissioner

IN THE MATTER OF QWEST )  
CORPORATION'S COMPLIANCE WITH )  
SECTION 252(e) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF U S WEST )  
COMMUNICATIONS, INC.'S )  
COMPLIANCE WITH SECTION 271 OF )  
THE COMMUNICATIONS ACT OF 1996 )

DOCKET NO. T-00000A-97-0238

ARIZONA CORPORATION COMMISSION )  
Complainant, )  
V. )  
QWEST CORPORATION )  
Respondent )

DOCKET NO. T-01051B-02-0871

DIRECT

TESTIMONY

OF

MATTHEW ROWELL

CHIEF: TELECOMMUNICATIONS AND ENERGY SECTION

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

AUGUST 14, 2003

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## **EXECUTIVE SUMMARY**

On July 25, 2003 the Staff of the Arizona Corporation Commission ("Staff") and Qwest Corporation ("Qwest") filed a proposed Settlement Agreement ("the Settlement") in the following dockets: RT-00000F-02-0271, T-00000A-97-0238, and T-01051B-02-0871. Mr. Rowell's testimony will provide an overview of the Settlement and describe and explain the provisions of the Settlement.



**INTRODUCTION**

**Q. Please state your name and business address for the record.**

A. My name is Matthew Rowell. My business address is: Arizona Corporation Commission,  
1200 West Washington Street, Phoenix, Arizona 85007.

**Q. What is your position at the Arizona Corporation Commission ("Commission")?**

A. I am the Chief of the Telecommunications and Energy section of the Commission's  
Utilities Division.

**Q. Please describe your education and professional background.**

A. I received a BS degree in economics from Florida State University in 1992. I spent the  
following four years doing graduate work in economics at Arizona State University where  
I received a MS degree and successfully completed all course work and exams necessary  
for a Ph.D. My specialized fields of study were Industrial Organization and Statistics. I  
was hired by the Commission in October of 1996 as an Economist II. I was promoted to  
the position of Senior Rate Analyst in November of 1997 and to my current position in  
July of 2001. Prior to my Commission employment I was employed as a lecturer in  
economics at Arizona State University, as a statistical analyst for Hughes Technical  
Services, and as a consulting research analyst at the Arizona Department of  
Transportation.

**Q. What is the purpose of your testimony?**

A. The purpose of my testimony is to describe the Settlement Agreement that the Staff of the  
Arizona Corporation Commission ("Staff") reached with Qwest Corporation ("Qwest")  
regarding the following dockets and subdocket: RT-00000F-02-0271 an investigation into  
Qwest's compliance with Section 252(e) of the Telecommunications Act of 1996 ("the

1 252(e) docket”), T-01051B-02-0871 a Complaint and Order to Show Cause (“OSC”)  
2 brought by the Commission against Qwest for their failure to implement certain wholesale  
3 rates in a timely fashion, and T-00000A-97-0238 a subdocket to Qwest’s application to  
4 provide interLATA service pursuant to Section 271 of the Telecommunications Act of  
5 1996 (“the Act”) intended to determine the extent to which Qwest interfered with the  
6 regulatory process and to determine appropriate remedies for such interference. These  
7 three dockets are referred to as “the Litigation” in the Settlement.  
8

9 **OVERVIEW OF THE SETTLEMENT**

10 **Q. Please provide an overview of the Settlement Agreement.**

11 A. Through the Settlement Qwest has agreed to a variety of concessions including payments  
12 to the State, voluntary contributions, opportunities for CLECs to obtain monetary relief,  
13 independent monitoring, and the withdraw by Qwest of its appeal of Commission  
14 Decision No. 64922 (Phase II of the Wholesale Pricing Docket, Docket No. T-00000A-00-  
15 0194.) The Settlement provides for a total of at least \$20,397,000 in payments or  
16 investments by Qwest. Each provision of the Settlement will be described in detail below.  
17

18 **PARAGRAPH 1: CASH PAYMENT**

19 **Q. Please explain the cash payment Qwest has agreed to provide under Paragraph 1 of**  
20 **the Settlement Agreement.**

21 A. Qwest agrees to pay the sum of \$5,197,000 to the State Treasurer within 30 days of the  
22 Effective Date of a Commission Decision approving the Settlement. This aggregate cash  
23 payment consists of three components: \$5,000,000 for the allegations concerning Qwest’s  
24 willful noncompliance with Section 252(e) and for Qwest’s alleged interference with the  
25 Section 271 regulatory process, \$47,000 for unfilled interconnection agreements which  
26 Staff believes should have been filed pursuant to Section 252(e) (but for which Staff could

1 not find that Qwest's actions were intentional and willful), and \$150,000 for the delayed  
2 implementation of wholesale rates ordered by the Commission in Decision No. 64922.

3 Paragraph 24 of the Settlement provides that the payment to the State Treasurer can be  
4 made conditional on the right to a refund in the event that the Settlement is appealed and  
5 the court of the highest jurisdiction to which the matter is appealed finds in a final non-  
6 appealable order that the Settlement is unlawful or that the Commission Decision  
7 approving the Settlement is reversed.

8  
9 **PARAGRAPH 2: VOLUNTARY CONTRIBUTIONS**

10 **Q. Please provide an overview of the provisions of Paragraph 2.**

11 A. Qwest agrees to pay an additional \$6,000,000 (or more) pursuant to Paragraph 2.  
12 Paragraph 2 does not specify exactly what the \$6,000,000 will be spent on, rather it  
13 provides the Commission with a menu of options for use of the funds. Three general  
14 categories are identified for Commission consideration. It is left to the Commission to  
15 decide or provide guidance on what portion of the \$6,000,000 should be allocated to each  
16 of the three categories. The three categories are: Charitable Contributions, Consumer  
17 Education on Telecommunications Issues, and Infrastructure Investment. Within each of  
18 these categories individual projects will be proposed by Qwest, Staff, and/or the  
19 Commission. Individual projects will be chosen as described below.

20  
21 **Q. Is it possible that more than \$6,000,000 will be available for disbursement under the**  
22 **terms of Paragraph 2?**

23 A. Yes. The amounts to be paid out by Qwest pursuant to Paragraphs 3, 4, and 5 of the  
24 Settlement will vary based upon the extent of CLEC eligibility and participation.  
25 However, the Settlement provides for a minimum amount to be paid out pursuant to

1 Paragraphs 3, 4, and 5.<sup>1</sup> If the actual amount paid out under any of Paragraphs 3, 4, and/or  
2 5 is less than the minimum amount specified in the Settlement, the balance will be dealt  
3 with pursuant to Paragraph 2. For example, the minimum amount to be paid out to  
4 CLECs pursuant to Paragraph 3 (Discount Credits) is \$8,100,000. If it turns out that the  
5 actual amount paid out is \$7,000,000; then the remaining \$1,100,000 will become  
6 available for disbursement pursuant to Paragraph 2. Individual projects will then again  
7 need to be selected. See the discussion of Paragraphs 6 and 7 below for more detail on  
8 this process.

9  
10 **Q. Can you explain each of the three categories of Voluntary Contributions?**

11 A. The first category, Charitable Contributions, includes contributions to organizations that  
12 qualify for exemptions under Section 501(c)(3) of the IRS Tax Code. Additionally,  
13 contributions to State-funded programs involved in either education or economic  
14 development are also contemplated under this category.

15 The second category includes educational programs to promote greater understanding of  
16 telecommunications issues by Arizona consumers. Individual programs would be  
17 proposed as discussed below.

18 The third category, Infrastructure Investments, includes investments by Qwest in its  
19 network that it would not have otherwise undertaken. Examples of such investments  
20 include the deployment of advanced services in rural areas, the deployment of basic  
21 infrastructure in remote areas currently within Qwest's service area boundaries, and/or the  
22 deployment of infrastructure and agreement to serve in areas currently outside of Qwest's  
23 service area boundaries.

---

<sup>1</sup> The minimum amounts are referred to as Minimum Settlement Amounts in the Settlement Agreement.

- 1 **Q. Please describe the process by which the initial individual projects<sup>2</sup> will be selected.**
- 2 A. First, the parties will request that the Commission determine the allocation among the
- 3 three categories described above. With the Commission's approved allocation in mind
- 4 Qwest will provide a list of proposed projects within 30 days of the Effective Date of the
- 5 Commission Decision approving the Settlement ("the Effective Date".) Within 60 days of
- 6 the Effective Date other signatories to the Agreement (i.e., Staff) can provide a list of
- 7 proposed projects. Within 180 days of the Effective Date the Director of the
- 8 Commission's Utilities Division and Qwest's Arizona President will agree in writing on
- 9 which projects will be recommended for approval. If they can not reach agreement within
- 10 180 days of the Effective Date, the selection of projects will be escalated to the
- 11 Commission. In that event all parties (whether they were signatories to the Agreement or
- 12 not) have the right to argue in support of or opposition to the proposed projects before the
- 13 Commission.
- 14
- 15 **Q. If the Commission so desires can it propose individual projects?**
- 16 A. Yes. The process described above does not include an explicit provision for the
- 17 Commission's input on specific projects; however, it does not preclude the Commission
- 18 from designating its own specific projects if it so desires.
- 19
- 20 **Q. Why does the Settlement contemplate the Commission determining the allocation**
- 21 **among the three categories prior to individual projects being proposed?**
- 22 A. Conceivably there are myriad different projects that could be proposed. Receiving
- 23 feedback from the Commission early in the process will allow Qwest and Staff to narrow
- 24 the list of proposed projects to those that are consistent with the vision of the Commission.

---

<sup>2</sup> The word "project" is used in a very broad sense here. For the first category of Voluntary Contributions, Charitable Contributions, a "project" could simply be a specific amount donated to a specific charity. For the third category, Infrastructure Investment, a "project" refers to an actual project that involves investments in infrastructure.

1 Thus, knowing the Commission's preferred allocation among the categories will make the  
2 selection of individual projects much more efficient than it otherwise would be.

3  
4 **Q. Once established, can the allocations between the three categories be altered?**

5 A. Yes, Paragraph 2 provides that the Commission and the Director of the Utilities Division  
6 will have the discretion to revise the allocations on a project by project basis if Qwest has  
7 not already spent or contractually committed the allocated funds.

8  
9 **Q. If the actual amount paid out under any of Paragraphs 3, 4, and/or 5 is less than the**  
10 **minimum amount specified in the Settlement, the balance will be dealt with pursuant**  
11 **to Paragraph 2. If this occurs how will these funds be allocated to individual**  
12 **projects?**

13 A. Paragraph 7 provides that within 240 days of the Effective Date Qwest will submit a  
14 written report to Staff detailing the amount paid out under Paragraphs 3, 4, and 5. If all  
15 CLECs have signed a release of claims and the minimum amounts under Paragraphs 3, 4,  
16 and/or 5 have not been met then the additional allocation process will start after that report  
17 is submitted. If not all CLECs execute a release of all claims Qwest is required to submit  
18 a final written report within 60 days of the one year period following the Effective Date  
19 (14 months from the Effective Date.) The final report will specify the difference between  
20 the minimum amounts and the actual amounts paid out pursuant to Paragraphs 3, 4, and 5.  
21 If there are funds available to use pursuant to Paragraph 2, the process described above  
22 will restart. First, the parties will request that the Commission determine or provide  
23 guidance on the allocation among the three categories described above. With the  
24 Commission's approved allocation in mind Qwest will provide a list of proposed projects  
25 within 30 days of the final report. Within 60 days of the final report other signatories to  
26 the Agreement (i.e., Staff) can provide a list of proposed projects. Within 180 days of the

1 final report the Director of the Commission's Utilities Division and Qwest's Arizona  
2 President will agree in writing on which projects will be approved. If they can not reach  
3 agreement within 180 days of the final report, the selection of projects will be escalated to  
4 the Commission. In that event all parties (whether they were signatories to the Agreement  
5 or not) have the right to argue in support of or opposition to the proposed projects before  
6 the Commission.

7  
8 **Q. Once the individual projects are selected how long will it be before they are**  
9 **implemented?**

10 **A.** If the projects do not require additional facilities or development of new programs, Qwest  
11 shall make its investments in the approved projects within 60 days of the agreement  
12 between the Utilities Division Director and Qwest's Arizona President or of approval by  
13 the Commission if agreement can not be reached. If a project requires Qwest to develop  
14 additional facilities or to develop new programs, construction of such facilities and  
15 implementation of such programs shall commence no later than 180 days from the  
16 agreement of the Director of the Utilities Division and Qwest's Arizona President, barring  
17 any circumstances outside of Qwest's control, including but not limited to, right-of-way  
18 ("ROW"), permits, environmental studies, archaeological studies, contract and/or lease  
19 negotiations or force majeure events, which shall extend the above-referenced  
20 construction date. Any such extensions of time shall first be approved by the  
21 Commission's Director of Utilities.

1    **Q.    For projects that involve investments in infrastructure, how will the Commission**  
2           **know that Qwest would not have implemented those projects even if they had not**  
3           **entered into the Settlement Agreement?**

4    **A.    Qwest has explicitly agreed to provide Staff with the information necessary to determine**  
5           **whether Qwest had already planned to implement a project outside of the Settlement.**

6  
7    **Q.    The Infrastructure Investment category includes investments in unserved and**  
8           **underserved areas. How are unserved and underserved areas defined?**

9    **A.    Unserved areas are areas outside of Qwest's current exchange boundaries not currently**  
10           **served or not adequately served by any wireline telephone service provider and other areas**  
11           **as determined or approved by the Commission. This definition gives the Commission**  
12           **wide latitude in designating areas as unserved. For example, in discussions between Staff**  
13           **and Qwest it was agreed that if the Commission wished to have Qwest serve the Rio**  
14           **Verde/Granite Mountain area currently served by Midvale Telephone Exchange that could**  
15           **be accomplished pursuant to Paragraph 2. Underserved areas are areas within Qwest's**  
16           **current exchange boundaries but outside the Base Rate Area which do not currently have**  
17           **Qwest wireline telephone facilities available.**

18  
19    **PARAGRAPH 3: DISCOUNT CREDITS**

20    **Q.    Please describe the provisions of Paragraph 3.**

21    **A.    Paragraph 3 provides for Qwest to provide a credit to CLECs equal to 10% of their**  
22           **purchases of services covered by Sections 251 (b) and (c) of the Act made during the time**  
23           **period January 1, 2001 thru June 30, 2002. Qwest will issue these credits to the eligible**  
24           **CLECs within 180 days of the Commission's Decision approving the Settlement.**



1     **Q.     Which CLECs are eligible to receive the credit?**

2     A.     All CLECs except for Eschelon Telecom Inc. ("Eschelon") and McLeodUSA, Inc.  
3           ("McLeod") that were certificated and operating in Arizona between January 1, 2001 and  
4           June 30, 2002 are eligible to receive the credit.

5     **Q.     Why are Eschelon and McLeod excluded from receiving the credits?**

6     A.     The credit is based on the provisions of agreements entered into between Qwest and  
7           McLeod which were the subject of the 252(e) docket. Those agreements afforded  
8           Eschelon and McLeod the opportunity to receive credits similar to those provided for in  
9           Paragraph 3 of the Settlement. Since Eschelon and McLeod already have had an  
10          opportunity to receive a similar credit, there is no need for them to receive the same credit  
11          again. Specifically, the Volume Discount Agreement between McLeod and Qwest dated  
12          on or around October 26, 2000 and the Confidential Amendment to the Confidential/Trade  
13          Secret Stipulation with Eschelon and Qwest dated November 15, 2000 provided for 10%  
14          discounts on services purchased from Qwest.

15  
16    **Q.     What types of services are covered by Section 251 (b) and (c) of the Act?**

17    A.     Generally, wholesale services specific to the provision of local service are covered  
18           by Section 251 (b) and (c) of the Act. Unbundled Network Elements ("UNEs"),  
19           resale services, and charges for collocation are all covered by Section 251 (b) and  
20           (c). Intrastate access, interstate access, switched access, special access, and private  
21           line are not covered by section 251 (b) and (c) of the Act.

22  
23    **Q.     What does an eligible CLEC need to do to receive the credits?**

24    A.     Eligible CLECs must sign a release of claims against Qwest that arise from Docket  
25           Nos. RT-00000F-02-0271 and T-00000A-97-0238 (Subdocket.)

1 **Q. What are the minimum and maximum amounts to be credited under**  
2 **Paragraph 3? What happens if the minimum is not met or if the total claims**  
3 **exceed the maximum?**

4 A. The minimum amount of credits under Paragraph 3 is \$8,100,000. If it turns out that less  
5 than that amount is credited to the CLECs, the balance will be used in accordance with  
6 Paragraph 2 as discussed above. The maximum amount of credits under Paragraph 3 is  
7 \$8,910,000. If it turns out that the total claims of the CLECs pursuant to Paragraph 3  
8 exceed that amount, then Qwest will disperse the credits ratably. That is, each CLEC will  
9 receive that percentage of the \$8,910,000.00 equal to the percentage of that CLEC's claim  
10 for Discount Credits to the total claims of all CLECs for Discount Credits.  
11

12 **PARAGRAPH 4: ACCESS LINE CREDITS**

13 **Q. Please explain the provisions of Paragraph 4.**

14 A. Paragraph 4 provides for Qwest to provide CLECs with a credit equal to \$2 per month for  
15 each UNE-P line and unbundled loop purchased by the CLEC between July 1, 2001 and  
16 February 28, 2002, less amounts billed and collected by the CLEC from Qwest for  
17 terminating intraLATA toll over those UNE-P lines and unbundled loops during the same  
18 time period. Within 30 days of the Effective Date Qwest will notify each CLEC that  
19 purchased UNE-P or unbundled loops during the specified timeframe that they may be  
20 eligible for a credit. Such notice will include the procedures for response as described  
21 below.  
22

23 **Q. Which CLECs are eligible to receive the credit?**

24 A. All CLECs except for Eschelon and McLeod that were certificated and operating in  
25 Arizona between July 1, 2001 and February 28, 2002 are eligible to receive the credit.

1 **Q. Why are Eschelon and McLeod excluded from receiving the credits?**

2 A. The credits are based on the provisions of agreements entered into between Qwest and  
3 Eschelon which were the subject of the 252(e) docket. Specifically, the Switched Access  
4 Minute Reporting Letter from Qwest to Eschelon dated July 3, 2001 provided for \$2  
5 credits per line (unbundled loop or UNE-P). These credits were intended to address issues  
6 related to access records for Qwest's intraLATA toll traffic terminating to customers  
7 served by Eschelon's switches. That agreement afforded Eschelon the opportunity to  
8 receive credits similar to those provided for in Paragraph 4 of the Settlement. Since  
9 Eschelon has had an opportunity to receive similar credits, there is no need for them to  
10 receive the same credits again. While McLeod did not enter into an agreement that  
11 specifically provided for \$2 credits they did enter into several secret agreements with  
12 Qwest. Since McLeod was willing to enter into agreements that Staff believes violated  
13 Section 252(e) of the Act, Staff does not believe that they should benefit from the  
14 provisions of the Settlement.  
15

16 **Q. What does an eligible CLEC need to do to receive the credits?**

17 A. Eligible CLECs must sign a release of claims against Qwest that arise from Docket  
18 Nos. RT-00000F-02-0271 and T-00000A-97-0238 (Subdocket.) Also, within 60  
19 days of receiving the notice from Qwest, CLECs must provide Qwest with the  
20 average number of UNE-P lines and unbundled loops leased by the CLEC per  
21 month from July 2001 through February 2002 and the amount actually collected  
22 from Qwest for terminating intraLATA toll calls over those UNE-P lines and  
23 unbundled loops during the same time period.

1   **Q.   What are the minimum and maximum amounts to be credited under**  
2       **Paragraph 4? What happens if the minimum is not met or if the total claims**  
3       **exceed the maximum?**

4   **A.**   The minimum amount of credits under Paragraph 4 is \$600,000. If it turns out that less  
5       than that amount is credited to the CLECs, the balance will be used in accordance with  
6       Paragraph 2 as discussed above. The maximum amount of credits under Paragraph 4 is  
7       \$660,000. If it turns out that the total claims of the CLECs pursuant to Paragraph 4  
8       exceed that amount, then Qwest will disperse the credits ratably. That is, each CLEC will  
9       receive that percentage of the \$660,000 equal to the percentage of that CLEC's claim for  
10      Discount Credits to the total claims of all CLECs for Discount Credits.

11  
12   **PARAGRAPH 5: UNE-P CREDITS**

13   **Q.   Please explain the provisions of Paragraph 5.**

14   **A.**   Paragraph 5 provides for Qwest to provide CLECs with a credit equal to \$13 per month  
15       for each UNE-P line purchased by the CLEC between November 1, 2000 and June 30,  
16       2001, and \$16 per month for each UNE-P line purchased by the CLEC between July 1,  
17       2001 and February 28, 2002, less amounts billed by the CLEC from interexchange carriers  
18       for terminating intraLATA toll over those UNE-P lines during the same time period.  
19       Within 30 days of the Effective Date Qwest will notify each CLEC that purchased UNE-P  
20       during the specified timeframe that they may be eligible for a credit. Such notice will  
21       include the procedures for response as described below.

22  
23   **Q.   Which CLECs are eligible to receive the credit?**

24   **A.**   All CLECs except for Eschelon and McLeod that were certificated and operating in  
25       Arizona between November 1, 2000 and February 28, 2002 are eligible to receive the  
26       credit.

1 **Q. Why are Eschelon and McLeod excluded from receiving the credits?**

2 A. The credits are based on the provisions of agreements entered into between Qwest and  
3 Eschelon which were the subject of the 252(e) docket. Specifically, the Confidential  
4 Amendment to the Confidential/Trade Secret Stipulation with Eschelon and Qwest dated  
5 November 15, 2000 and the Switched Access Minute Reporting Letter from Qwest to  
6 Eschelon dated July 3, 2001 provided for monthly \$13 credits per UNE-P line.  
7 Those agreements afforded Eschelon the opportunity to receive credits similar to those  
8 provided for in Paragraph 5 of the Settlement. These agreements were entered into to  
9 compensate Eschelon for inaccurate daily usage information provided by Qwest.  
10 Accurate daily usage information is necessary for a CLEC to bill interexchange carriers  
11 for access. Since Eschelon already has had an opportunity to receive similar credits, there  
12 is no need for them to receive the same credits again. While McLeod did not enter into an  
13 agreement that specifically provided for \$13 credits they did enter into several secret  
14 agreements with Qwest. Since McLeod was willing to enter into agreements that Staff  
15 believes violated Section 252(e) of the act, Staff does not believe that they should benefit  
16 from the provisions of the Settlement.

17  
18 **Q. What does an eligible CLEC need to do to receive the credits?**

19 A. Eligible CLECs must sign a release of claims against Qwest that arise from Docket  
20 Nos. RT-00000F-02-0271 and T-00000A-97-0238 (Subdocket.) Also, within 60  
21 days of receiving the notice from Qwest, CLECs must provide Qwest with the  
22 following information:  
23 i. The months from November of 2000 to February, 2002 that the CLEC  
24 believes it did not receive accurate daily usage information from Qwest.  
25  
26 ii. The reasons that the CLEC believes that the daily usage information was  
27 inaccurate.  
28

- 1           iii.    The average number of UNE-P lines leased by the CLEC in service for
- 2                   each such month that it believes it did not receive accurate daily usage
- 3                   information.
- 4
- 5           iv.    The aggregate amount the CLEC actually billed interexchange carriers for
- 6                   switched access originated and terminated through such UNE-P lines for
- 7                   each month in which the CLEC believes Qwest's daily usage information
- 8                   was inaccurate.
- 9

10           Within 60 days of receipt of the above information Qwest will either inform the CLECs of

11           the amount of the credit they are to do or explain the reason Qwest believes that the daily

12           usage files Qwest provided to the CLECs are accurate. Within 30 days of such notice

13           Qwest will credit the eligible CLECs the relevant amounts.

14           If Qwest informs a CLEC that they believe the daily usage files provided were accurate,

15           the CLEC will have 30 days to respond. Qwest will then have the burden to show that the

16           daily usage files were accurate.

17           Qwest has agreed not to require CLECs to provide information that Qwest already

18           possesses.

19

20   **Q.    What are the minimum and maximum amounts to be credited under Paragraph 5?**

21   **What happens if the minimum is not met or if the total claims exceed the maximum?**

22   **A.**   The minimum amount of credits under Paragraph 5 is \$500,000. If it turns out that less

23           than that amount is credited to the CLECs, the balance will be used in accordance with

24           Paragraph 2 as discussed above. The maximum amount of credits under Paragraph 5 is

25           \$550,000. If it turns out that the total claims of the CLECs pursuant to Paragraph 5

26           exceed that amount, then Qwest will disperse the credits ratably. That is, each CLEC will

27           receive that percentage of the \$550,000 equal to the percentage of that CLEC's claim for

28           Discount Credits to the total claims of all CLECs for Discount Credits.

**PARAGRAPHS 6 AND 7: ADDITIONAL VOLUNTARY CONTRIBUTIONS AND  
REPORT ON CREDITS**

**Q. What reporting requirements does the Settlement impose on Qwest regarding the credits given pursuant to Paragraphs 3, 4, and 5?**

A. Paragraph 7 provides that Qwest will submit a written report to Staff within 240 days of the Effective Date demonstrating that it has issued the credits pursuant to Paragraphs 3, 4, and 5. Paragraph 7 also provides that Qwest will supply Staff with any reasonable information necessary for Staff to determine that the credits were issued in a proper and timely manner. Regarding the eventuality that not all eligible CLECs have signed a release of all claims, Paragraph 7 provides that Qwest will submit a written report to Staff 425 days (14 months) after the Effective Date.

**Q. If the minimum amounts discussed in Paragraphs 3, 4, and 5 above are not met and not all CLECs have signed a release of claims, how long does Qwest have before it must make the balance available for use pursuant to Paragraph 2?**

A. Paragraph 6 provides that Qwest will make such payments within 90 days of the final report referenced in the above Q and A. This translates to within 17 months of the Effective Date.

**Q. What are the other provisions of Paragraph 6?**

A. Paragraph 6 also provides that for CLECs that do not sign a release of claims, Qwest may deduct from the relevant minimum amounts the amount owed to those CLECs pursuant to Paragraphs 3, 4, and 5 for a period of twelve months from the Effective Date. Pursuant to Paragraph 6 Qwest may also deduct from the relevant minimum amounts any amounts due under Paragraphs 3, 4, and 5 for any CLECs that bring claims against Qwest within one year of the Effective Date.

**1 PARAGRAPHS 8 AND 9: RETENTION OF INDEPENDENT MONITOR AND**  
**2 COMPLIANCE TRAINING**

**3 Q. Please describe the provisions of Paragraph 8.**

**4 A.** Paragraph 8 requires that Qwest hire and pay for an independent monitor to conduct an  
**5** annual review of Qwest's Wholesale Agreement Review Committee.<sup>3</sup> The monitor will  
**6** be selected by the Director of the Utilities Division with input from Qwest. The monitor  
**7** will be retained within 90 days of the Effective Date. The monitor will be retained for a  
**8** period of three years. The scope of the monitor's annual audits will be determined by  
**9** Staff with input from Qwest and interested parties. Staff believes that the retention of an  
**10** independent monitor is important because it addresses the issue of ongoing compliance.  
**11** Without a monitor the Commission would have no way to ensure that Qwest's newly  
**12** established processes are adequate to prevent future occurrences of the actions that are the  
**13** subject of the Litigation.

**14**  
**15 Q. Please describe the provisions of Paragraph 9.**

**16 A.** Paragraph 9 provides that Qwest will continue its internal web based training program  
**17** concerning compliance with Section 252(e).  
**18**

**19 PARAGRAPH 10: OPT IN FOR ELIGIBLE CLECS**

**20 Q. Please describe the provisions of Paragraph 10.**

**21 A.** Paragraph 10 provides that any CLEC currently certificated and operating in Arizona can  
**22** opt into the non-monetary provisions relating to Section 251(b) and (c) services of any of  
**23** the 28 interconnection agreements listed in Table 1 of the pre-filed Direct Testimony of  
**24** Marta Kalleberg in Docket No. RT-00000F-02-0271. Table 1 of said testimony is a listing

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<sup>3</sup> The Wholesale Agreement Review Committee is a committee of Qwest employees established to review all wholesale contracts to determine whether they need to be filed with regulatory bodies. The committee was established in response to the investigations into Qwest's compliance with Section 252(e) of the act.



of interconnection agreements that should have been filed by Qwest, but were not. When opting in to one of these agreements CLECs must satisfy the criteria of Section 252(i) of the Act, e.g., they must assume any terms in the agreement related to the one they wish to opt into. Disputes between CLECs and Qwest on eligibility to opt into these agreements will be handled by the Commission in Phase II of Docket RT-00000F-02-0271. Some of these agreements have been terminated but Qwest will make them available for opt-in.

Table 1 is reproduced below:

**Table 1: Agreements That Should Have Been Filed for Commission Approval**

1.	Eschelon (formerly ATI)	Confidential/Trade Secret Stipulation with US WEST dated 2/28/00
2.	Eschelon	Trial Agreement with Qwest dated 7/21/00
3.	Eschelon	Confidential Purchase Agreement with Qwest dated 11/15/00
4.	Eschelon	Confidential Amendment to Confidential/Trade Secret Stipulation with Qwest dated 11/15/00
5.	Eschelon	Escalation Procedures Letter from Qwest dated 11/15/00
6.	Eschelon	Daily Usage Information Letter from Qwest dated 11/15/00
7.	Eschelon	Feature Letter from Qwest dated 11/15/00
8.	Eschelon	Confidential Billing Settlement Agreement with Qwest dated 11/15/00
9.	Eschelon	Status of Switched Access Minute Reporting Letter from Qwest dated 7/3/01
10.	Eschelon	Implementation Plan with Qwest dated 7/31/01
11.	McLeod	Confidential Settlement Document with US WEST dated 4/25/00
12.	McLeod	Confidential Billing Settlement Agreement with Qwest dated 9/29/00
13.	McLeod	Amendment to Confidential Billing Settlement Agreement with Qwest dated 10/26/00
14.	McLeod	Volume Discount Agreement with Qwest dated on or around 10/26/00
15.	McLeod	Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (McLeod buys from Qwest) dated 10/26/00
16.	McLeod	Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (Qwest buys from McLeod) dated 10/26/00
17.	Electric Lightwave	Confidential Settlement Agreement and Release with US WEST dated 6/16/99
18.	Electric Lightwave	Confidential Billing Settlement Agreement and Release with US WEST dated 12/30/99
19.	Electric Lightwave	Amendment No. 1 to Confidential Billing Settlement Agreement and Release with US WEST dated 6/21/00
20.	Electric Lightwave	Binding Letter Agreement with Qwest dated 7/19/01
21.	Allegiance	Internetwork Calling Name Delivery Service Agreement with US WEST dated 3/23/00
22.	Allegiance	Directory Assistance Agreement with US WEST dated 6/29/00
23.	Global Crossing	Settlement Agreement and Release with Qwest dated 9/18/00
24.	GST	Confidential Billing Dispute Settlement Agreement and Release with US WEST dated 1/7/00
25.	Paging Network	Confidential Billing Settlement Agreement with Qwest dated 4/23/01
26.	SBC & NAS	Confidential Consent to Assignment & Collocation Change of Responsibility Agreement with Qwest dated 6/1/01
27.	WorldCom	Confidential Billing Settlement Agreement with Qwest dated 12/17/00
28.	XO (formerly Nextlink)	Confidential Billing Settlement Agreement with US WEST dated 5/12/00

1 Table 1 includes 28 agreements. However, altogether Staff had identified 42 agreements  
2 that should have been filed in the Direct Testimony of Marta Kalleberg. Since Qwest has  
3 already filed fourteen of those agreements with the Commission which were approved  
4 with modification in Decision No. 65475, dated December 19, 2002 they are already  
5 available for opt-in.

6  
7 **PARAGRAPH 11: WITHDRAWAL OF FEDERAL APPEAL**

8 **Q. Please describe the provisions of Paragraph 11.**

9 A. Paragraph 11 requires Qwest to withdraw their appeal of Commission Decision No. 64922  
10 (Phase II of the Wholesale Pricing Docket) which is currently pending before the United  
11 States District Court for the District of Arizona. Qwest agrees to move to dismiss with  
12 prejudice said appeal within 30 days of the Effective Date.

13  
14 **PARAGRAPH 12: RETENTION OF CONSULTANT FOR IMPLEMENTATION OF**  
15 **WHOLESALE RATES**

16 **Q. Please describe the provisions of Paragraph 12.**

17 A. Paragraph 12 provides that Qwest will pay for an independent consultant to provide  
18 independent assessments to the Commission of improvements made to automate Qwest's  
19 wholesale rate implementation process. (The wholesale rate implementation process was  
20 the subject of the OSC docket.) The consultant will be selected by the Director of the  
21 Utilities Division with input from Qwest. The consultant will be hired within 90 days of  
22 the Effective Date and will be retained for a period of three years. The total billings of  
23 this consultant will be capped at \$150,000. The scope of the consultants work will be  
24 determined by Commission Staff with input from Qwest. Staff believes that the retention  
25 of an independent consultant is important because it addresses the issue of ongoing  
26 compliance. Without such a consultant the Commission would be unable to determine

1 whether Qwest's newly established processes are adequate to prevent future occurrences  
2 of the actions that are the subject of the OSC Docket.

3  
4 **PARAGRAPH 13 AND 14: COST DOCKET GOVERNANCE TEAM AND**  
5 **NOTIFICATION OF WHOLESALE RATE CHANGES**

6 **Q. What does the Settlement provide for regarding the Cost Docket Governance Team?**

7 A. Paragraph 13 provides that the Cost Docket Governance Team will continue for a period  
8 of three years from the Effective Date. The Cost Docket Governance Team is a team of  
9 executive level Qwest personnel whose purpose is to provide oversight for Qwest's  
10 improvements to the Wholesale Rate Implementation Process and to act as an escalation  
11 point if necessary.

12  
13 **Q. What has Qwest agreed to regarding notification of wholesale rate changes?**

14 A. Paragraph 14 provides that Qwest will notify its wholesale customers (the CLECs) upon  
15 the occurrence of the following: (a) the issuance of a final Commission Decision changing  
16 wholesale rates which contains updated rate sheets, (b) the appearance of new wholesale  
17 rates on customer bills. Qwest will also provide the Commission and Staff with  
18 information regarding the status and time frames for implementation of future wholesale  
19 rates.

20 Qwest will meet and confer with Staff one year from the Effective Date regarding the  
21 status of Qwest's wholesale rate implementation processes, current industry expectations  
22 for wholesale rate implementation, and Qwest's business practices relative to wholesale  
23 rate implementation and the negotiation of interconnection agreements.

**PARAGRAPH 15: WHOLESALE RATE IMPLEMENTATION**

**Q. What does the Settlement provide for regarding wholesale rate implementation?**

A. The settlement provides for a process that is somewhat different from that currently used by the Commission. Currently when the Commission issues a Decision dealing with wholesale rates, the actual rates are usually not included in the Decision. Qwest is required to make a compliance filing thirty days after a Decision is issued that includes all of the new rates (a numeric price list.) During the preparation of the compliance filing all parties of the docket are consulted to insure they concur with the rates. After the compliance filing is made Qwest implements the rates at some unspecified point in the future.

The Settlement provides for a different process. The Settlement provides that within 14 days of a *Recommended* Opinion and Order ("ROO") being issued by the Hearing Division Qwest will file a numeric price list. The Commission Decision will then include the price list. Qwest will use its best efforts to provide an updated price list for inclusion in a Commission Decision should the Commission make modifications to the ROO. Upon issuance of a Commission Decision that includes the final price list, Qwest will implement the new rates within 60 days.

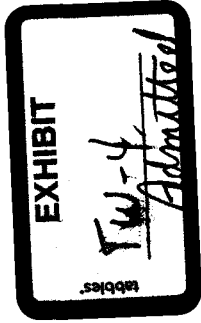
**PARAGRAPH 16: FILING OF SETTLEMENT AGREEMENTS**

**Q. Please describe the provisions of Paragraph 16.**

A. Paragraph 16 provides that Qwest will file with the Commission any settlement agreements reached in Commission dockets of general application within 10 days of execution. Also, for a period of three years from the Effective Date Qwest will file annual reports attesting that they either have filed such agreements or that no such agreements were entered into.

1 Q. Does this conclude your testimony?

2 A. Yes, it does.



# Settlement Negotiations Timeline

Docket Nos. T-00000F-02-0271; T-00000A-97-0238; T-01051B-02-0871

July 25, 2003  
Qwest and Staff file  
Settlement Agreement  
and request  
Commission approval

July 17, 2003  
Comments on Agreement  
due back to Staff by noon

July 15-16, 2003  
Revised draft Settlement Agreement  
e-mailed out by Qwest and Staff

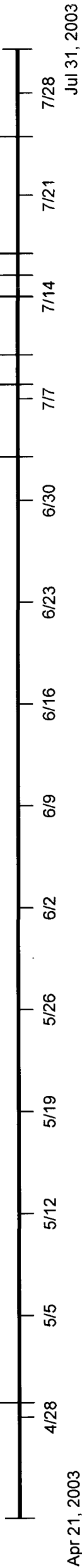
July 14, 2003  
Qwest, Staff and a few CLECs  
meet again to discuss Principles;  
draft Settlement Agreement distributed

July 10, 2003  
Qwest, Staff and  
select CLECs meet  
to discuss Principles

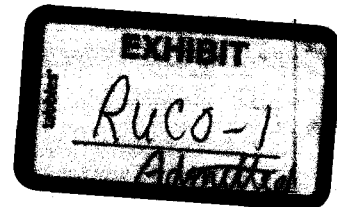
July 8, 2003 (5:00 pm)  
Comments due from recipients of 7/3/03 e-mail;  
Principles emailed to broader group of CLECs.

July 3, 2003  
"Principles of Settlement"  
e-mailed to 5 eligible CLECs

April 29, 2003  
Settlement  
talks begin  
between Qwest  
and ACC Staff



ce/27 145123  
Nagman



BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
CHAIRMAN  
WILLIAM A. MUNDELL  
COMMISSIONER  
JIM IRVIN  
COMMISSIONER  
JEFF HATCH-MILLER  
COMMISSIONER  
MIKE GLEASON  
COMMISSIONER

IN THE MATTER OF QWEST  
CORPORATION'S COMPLIANCE WITH  
SECTION 252(e) OF THE  
TELECOMMUNICATIONS ACT OF 1996.

Docket No. RT-00000F-02-0271

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S  
COMPLIANCE WITH SECTION 271 OF  
THE TELECOMMUNICATIONS ACT OF  
1996.

Docket No. T-00000A-97-0238

ARIZONA CORPORATION COMMISSION

Docket No. T-01051B-02-0871

Complainant.

v.

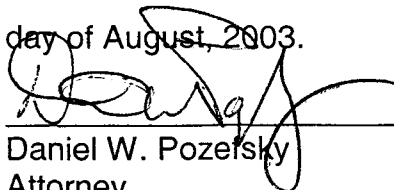
QWEST CORPORATION,

Respondent.

NOTICE OF FILING

The Residential Utility Consumer Office ("RUCO") hereby provides notice of filing  
the Testimony of Stephen Ahearn in the above-referenced matter.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of August, 2003.

  
Daniel W. Pozersky  
Attorney

1 AN ORIGINAL AND SEVENTEEN COPIES  
2 of the foregoing filed this 29<sup>th</sup> day  
3 of August, 2003 with:

4 Docket Control  
5 Arizona Corporation Commission  
6 1200 West Washington  
7 Phoenix, Arizona 85007

8 COPIES of the foregoing hand delivered/  
9 mailed this 29<sup>th</sup> day of August, 2003 to:

10 Jane L. Rodda  
11 Administrative Law Judge  
12 Hearing Division  
13 Arizona Corporation Commission  
14 400 West Congress Street, Room 222  
15 Tucson, Arizona 85701

16 Maureen Scott  
17 Legal Division  
18 Arizona Corporation Commission  
19 1200 West Washington  
20 Phoenix, Arizona 85007

21 Ernest Johnson, Director  
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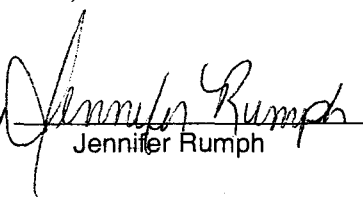
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By   
Jennifer Rumph

TESTIMONY  
OF  
STEPHEN AHEARN

ON BEHALF OF  
THE  
RESIDENTIAL UTILITY CONSUMER OFFICE

AUGUST 29, 2003

1 Q. Please state your name for the record.

2 A. My name is Stephen Ahearn. My business address is 1110 West Washington,  
3 Suite 220, Phoenix, AZ 85007.

4  
5 Q. Please state your educational background and qualifications in the utility regulation  
6 field.

7 A. I have been employed by the State of Arizona as the Director of the Residential  
8 Utility Consumer Office ("RUCO") since January 2003. From 1998 through 1999, I  
9 was employed by the Arizona Corporation Commission in the capacity of Executive  
10 Consultant. From 1990 to 1998, I was closely involved with utility regulation at the  
11 Commission and utility policy-making at the Legislature in my role as the Manager  
12 of Planning and Policy at the Department of Commerce Energy Office. Additionally,  
13 I have had training in utility ratemaking and telecommunications policy conducted by  
14 NARUC and New Mexico State University, respectively. Finally, I have an MBA in  
15 Finance from UCLA.

16  
17 Q. From what perspective do you offer this testimony?

18 A. I offer my testimony from a public policy orientation, and its emphasis is meant to go  
19 directly to issues affecting the integrity of the institution of the Arizona Corporation  
20 Commission. I do not offer this testimony as a technical expert; RUCO's technical  
21 record in this matter has previously been established in the relevant dockets.

22

23

24

1 Q. Please summarize your testimony.

2 A. My testimony presents RUCO's position regarding the proposed Settlement  
3 Agreement reached between Staff and Qwest. RUCO believes that the Settlement  
4 Agreement is insufficient and therefore not in the public interest. Most importantly,  
5 RUCO believes that Qwest needs to be held accountable and responsible for  
6 clearly demonstrated wrongdoing, and that a finding of wrongdoing by the  
7 Commission needs to be made in the 252 docket and 271 sub-docket. The reasons  
8 why this is of utmost importance will be elaborated upon and developed further in  
9 my testimony, and suggestions to address the deficiencies will be provided in the  
10 sections of this testimony that follow.

11  
12 With regard to the financial elements of the Settlement Agreement, RUCO  
13 acknowledges that the Settlement Agreement goes a long way to redress many of  
14 the grievances against the company in these combined cases. However, RUCO  
15 believes that the Settlement Agreement can be improved in the following ways:

- 16 • Settlement Agreement - §3, p. 6 - RUCO recommends a three year period be  
17 considered for the one-time credit (Settlement Agreement provides for a 1 ½  
18 year period) and should be applied to all types of services (i.e. not limited to  
19 just 252 services). These modifications make the Settlement Agreement  
20 conform more closely to the deal Eschelon and McLeod received;
- 21 • Settlement Agreement - §2, pp. 3-6 – regarding “underserved areas”- RUCO  
22 recommends a commitment from Qwest of a timetable acceptable to the  
23 Commission when broadband services will be available in the underserved  
24 areas;

- Settlement Agreement - § 2, p. 3-6 – The Settlement Agreement should specifically direct that Qwest will not be able to earn a return on any of the so-called “voluntary contributions” investments.

Q. Was RUCO a party to all the proceedings that are the subject of the Settlement Agreement?

A. No. RUCO was not a party to the OSC Docket regarding Qwest’s implementation of wholesale rates. Therefore, RUCO has evaluated the Settlement Agreement only as it relates to the 252 proceeding and the 271 proceeding.

Q. What was the status of the proceedings prior to the negotiation of the Settlement Agreement?

A. The Commission held a hearing in the 252 docket on March 17-20, 2003. Post-Hearing Briefs were filed and the matter has since been under advisement. On May 6, 2003, Staff filed its Report and Recommendation in the 271 Sub-Docket. On May 19, 2003, Qwest filed exceptions to the Staff Report and requested a hearing. Qwest has since conditionally withdrawn its request for a hearing and has filed with Staff a request for a joint procedural schedule. That request was granted and a hearing to consider the Settlement Agreement is scheduled to commence on September 16, 2003.

Q. Does RUCO find the Settlement Agreement to be a satisfactory resolution of the 252 Docket and the 271 Sub-Docket?

A. By itself, no.

1 Q. Why not?

2 A. Essentially, Qwest's conduct was so egregious that the company should be subject  
3 to a penalty that goes beyond merely paying money. Qwest not only interfered with  
4 the development of the competitive market by discriminating in favor of some  
5 competitors and against others, but it also undermined the integrity of the  
6 Commission's process to evaluate whether Qwest should be granted authority to  
7 enter the interLATA market. In addition, Qwest has demonstrated a history of  
8 inaccurately predicting its own performance, resulting in favorable treatment by the  
9 Commission. In consideration of this history, the Commission should exercise great  
10 caution and specificity in how it orders Qwest to act (or not act).

11  
12 Q. What evidence was presented that Qwest interfered with the development of  
13 competition?

14 A. The record clearly established that Qwest engaged in discriminatory conduct that  
15 favored two CLECs, Eschelon and McLeod, over others. These CLECs were  
16 provided pricing discounts unavailable to other CLECs, giving them a competitive  
17 advantage.

18  
19 Q. What evidence was presented that Qwest undermined the integrity of the  
20 Commission's process?

21 A. The record establishes that Qwest entered into, and failed to file, non-participation  
22 agreements with two of its largest wholesale customers, McLeod and Eschelon. It  
23 is clear from the record that these companies were experiencing significant service-  
24 related issues with Qwest. Because of the secret agreements, the Commission



1 was unaware of the service related issues during the course of its 271 process. In  
2 the case of Eschelon, relations turned so bad that at one point Qwest attempted to  
3 solicit compliance with the non-participation agreement by requesting that Eschelon  
4 destroy certain records and file supporting testimony and testify when requested by  
5 Qwest and in a manner suitable to Qwest. Throughout this time, Qwest was making  
6 its 271 case and assuring this Commission that it was in compliance with the  
7 various checklist items required by the Act.

8  
9 In addition, it is clear from the record that Qwest deliberately and intentionally failed  
10 to file interconnection agreements that, by law, this Commission is required to  
11 approve. Those agreements decided such things as rates and services between  
12 Qwest and the CLEC. In effect, Qwest, through its actions, assumed the role and  
13 carried out the function of the Commissioners.

14  
15 Q. What historical events suggest that the Commission should use the utmost care in  
16 how it formulates and words its Orders regarding Qwest?

17 A. Historically, Qwest may comply with the letter of this Commission's Orders, but  
18 does not always comply with the spirit of the Commission's Orders.

19  
20 For example, in Decision No. 62672 (Qwest merger with US West – June 30, 2000)  
21 the Commission ordered Qwest, because of the compelling need to upgrade  
22 Arizona's rural telephone services, to invest roughly \$48.24 million annually to  
23 upgrade or extend services in rural exchanges in "central offices of 50,000 or less  
24 access lines." The Commission's obvious intent was to require Qwest to invest in

1 rural service areas. In fact, as the Commission later found out, exchange areas of  
2 50,000 access lines include larger metropolitan areas — which were clearly not  
3 what the Commission intended in its Decision.

4  
5 Q. What other historical events suggest that the Commission should pay very close  
6 attention to the positions advocated by Qwest?

7 A. As I previously stated, the Company has a record of predicting highly inaccurate  
8 future business scenarios, resulting in undeservedly favorable treatment by the  
9 Commission. The 1999 merger docket (T-01051B-99-0497) provides a rich  
10 illustration of this corporate shortcoming. Qwest persuaded the Commission to  
11 approve the merger, because, according to Qwest, the merger would result in  
12 approximately \$18.5 billion of pro-forma year-2000 revenue; during the period from  
13 2000 through 2005 the merger would enable Qwest to achieve gross revenue  
14 synergies of more than \$12 billion and net financial and operational synergies of  
15 approximately \$10.5 to \$11 billion; the merger would result in the acceleration of the  
16 deployment of broadband communications; the merger would allow for the  
17 redeployment of approximately \$7.5 billion toward new investment in Internet  
18 applications and out-of-region broadband access and Internet services; and the  
19 merger would actually increase Qwest's incentives to meet consumer demands.

20  
21 In fact, what has actually happened to Qwest since the merger has been the subject  
22 of newspaper headlines throughout Qwest's fourteen-state region. Since the  
23 merger Qwest's credit <sup>RATING</sup> ~~the~~ has been cut to junk, its stock price has hit all-time lows,  
24 it has been the subject of numerous federal investigations including the SEC's

1 investigation into Qwest's accounting, the US Attorney's investigation of criminal  
2 wrongdoing, a congressional investigation in conjunction with Global Crossing, and  
3 a US General Service Administration announcement that it would review all  
4 governmental contracts that it had with Qwest. Qwest has experienced substantial  
5 quarterly revenue losses and announced that it made \$1.5 billion in accounting  
6 errors in 2002, creating the scenario that a bankruptcy filing was impending. It was  
7 only a short time after the merger that it was clear the merger would not result in the  
8 benefits that Qwest claimed.

9  
10 Q. Historically, has the imposition of fines/penalties been successful in deterring Qwest  
11 from wrongdoing?

12 A. No. In the past, the payment of substantial penalties has not deterred Qwest from  
13 wrongdoing. Since 1996, Qwest has paid this Commission over \$4.5 million in  
14 penalties regarding the Quality of Service Tariff. Qwest has also paid substantial  
15 penalties in other states. In Florida, Qwest paid \$3.25 million to settle slamming  
16 complaints, in California Qwest paid \$20 million in penalties for slamming violations,  
17 and in Arizona, Qwest settled for over \$3 million to resolve similar type complaints.  
18 One can reasonably conclude that Qwest considers fines as a cost of doing  
19 business and is not deterred by having to pay them.

20  
21 Q. From a policy perspective why do you believe Qwest needs to be held accountable  
22 beyond the monetary provisions set forth in the Settlement Agreement?

23 A. Qwest's conduct was egregious and possibly criminal. Qwest's conduct did more  
24 than just discriminate against non-party CLECs. Qwest participated in fraudulent

1 schemes that undermined the integrity of this Commission's regulatory process and  
2 has jeopardized the credibility of this and future Commissions. There is no discrete  
3 dollar value that the Commission can place on the integrity of the process or its own  
4 credibility.

5  
6 Q. Do you believe that the integrity of the Commission will be restored by the approval  
7 of the Settlement Agreement?

8 A. No.

9  
10 Q. Why not?

11 A. The public will question the integrity of the process as well as this Commission if the  
12 Commission does not act swiftly and appropriately to address Qwest's conduct that  
13 undermines the integrity of the Commission's process. A purely financial penalty—  
14 one that represents significantly less than one percent of Qwest's reported 2001  
15 gross revenues<sup>1</sup> -- will do little to restore the integrity of the process or the  
16 Commission, or to seriously give pause to other would-be bad actors. On the  
17 contrary, it is likely to further imperil the Commission's integrity and tarnish future  
18 regulatory processes by encouraging tolerance of Qwest-like conduct.

19  
20 Q. Do you believe that approval of the Settlement Agreement will send the wrong  
21 message to utilities contemplating wrongdoing before this Commission?

22 A. Yes.

---

<sup>1</sup> Using the \$21.317 million settlement maximum set forth in the proposed terms of settlement and dividing that by Qwest's annual Gross 2001 reported revenues (attached as Exhibit SA – 1) the settlement maximum represents .00108 of Qwest's total 2001 revenue (Qwest has not reported it's restated annual 2002 gross revenues).

1 Q. Why?

2 A. Approval of the Settlement Agreement will send the message that companies can  
3 engage in wrongdoing without the fear of a finding of wrongdoing. Instead, they will  
4 conclude the checkbook solution is available to them, and will plan and scheme  
5 accordingly. The decision to engage in wrongdoing will become less an ethical  
6 consideration and less a consideration of respect for regulatory authority and  
7 regulatory institutions. Instead, it will become an actuarial exercise—a financial  
8 calculation of the risk of being caught and the likely penalty if discovered.

9  
10 The payment of a large fine in this case will not in itself send the message this  
11 Commission should send to Qwest or potential future bad actors. Unfortunately,  
12 there is nothing that this Commission can do that will guarantee that Qwest will not  
13 engage in similar conduct in the future. However, the Commission does have and  
14 should exploit this opportunity to do everything in its power to send a message to  
15 Qwest and future companies considering similar illegal conduct that it will not be  
16 tolerated in Arizona.

17  
18 Q. Why would a finding of wrongdoing by this Commission be a stronger deterrent to  
19 Qwest from engaging in wrongdoing in the future?

20 A. First, it will allow the Commission to invoke its contempt powers <sup>if</sup> ~~when~~ Qwest  
21 engages in wrongdoing in the future. Second, it will send the message to Qwest as  
22 well as other regulated utilities that if they are to engage in future wrongdoing in  
23 Arizona, they will not be able simply to buy their way out of it. Third, it will send a

1 message that a decision to engage in wrongdoing will be more than just a financial  
2 decision.

3  
4 Q. Would a finding of wrongdoing be necessary for the Commission to consider  
5 Eschelon and McLeod's participation in the scheme also improper?

6 A. Yes. Qwest was not the only participant guilty of wrongdoing. Eschelon and  
7 McLeod were also involved in the scheme. Should the Commission consider  
8 holding Eschelon and McLeod accountable, a finding against Qwest is necessary  
9 since the scheme involved Qwest. Not finding Qwest responsible for wrongdoing  
10 and clearing Eschelon and McLeod of any wrongdoing will compound the  
11 consequences of their acts—it will send the message to CLECs contemplating  
12 illegal behavior that at least under some circumstance they will not have to fear any  
13 consequences from this Commission.

14  
15 Q. Would a finding of wrongdoing promote the integrity of the Commission in this  
16 case?

17 A. Yes. Allowing Qwest to escape without a Finding offends the notion of justice and  
18 would make the Commission appear as though it is more interested in accepting  
19 money than in defending the integrity of its processes.

20  
21 Q. How do you recommend the Commission proceed to address RUCO's concerns?

22 A. RUCO would not object to the Commission approving the Settlement Agreement as  
23 long as the Order granting approval includes a specific Finding of Fact and a  
24 corresponding Conclusion of Law that Qwest engaged in practices that were

1 discriminatory and illegal, as well as an ordering paragraph ordering Qwest to cease  
2 engaging in discriminatory and illegal conduct.

3  
4 Q. How would such terms in the Order assure that Qwest would not behave in the  
5 future as it has in the past?

6 A. As I stated above, there is no way to guarantee Qwest's future behavior. At best,  
7 the Commission can enter an Order that sufficiently limits Qwest's conduct such  
8 that, if Qwest did violate that Order, the Commission can take action pursuant to its  
9 contempt powers.

10  
11 Q. Doesn't the Settlement Agreement already provide that Qwest failure to comply can  
12 be enforced through the Commission's contempt powers?

13 A. Yes, but because an Order that merely adopts the Settlement Agreement would  
14 only order Qwest to do certain things, the Commission could not find Qwest in  
15 contempt if it did those specific things but engaged in other forms of discriminatory  
16 or illegal conduct. By drafting the Order to proscribe a broad category of conduct  
17 (discriminatory and illegal conduct), the Commission could find Qwest in contempt  
18 for any act of discriminatory or illegal conduct, not just for failing to comply with the  
19 narrow requirements of the Settlement Agreement.

20  
21 Q. What other provisions of the Settlement Agreement do you feel need to be  
22 improved?

23 A. Following is a list of the other components of the Settlement Agreement that I feel  
24 can be improved and the reasons why;

1           1)     Settlement Agreement - § 3, p. 6 - this section of the Settlement Agreement  
2                   provides that Qwest will issue a one-time credit to eligible CLECs, equal to a  
3                   10% of the total amount of services purchased under sections 251 (b) and (c)  
4                   of the Act. The credit applies to those purchases made during the period of  
5                   January 1, 2001 through June 30, 2001. *RUCO recommends that this term*  
6                   *be changed to allow a one-time credit for purchases made during a three*  
7                   *year period and should be applied to all types of purchases (i.e. not limited to*  
8                   *just §252 services).* The basis for RUCO's recommendation is that the  
9                   minimum time period for the Eschelon deal was 5 years and the McLeod  
10                  agreement had a minimum period of 3 ½ years, and both applied to all  
11                  purchases. The Settlement Agreement should provide for a discount period  
12                  that approaches the minimum of what was agreed to in the secret  
13                  agreements and applies to the same services that were purchased.

14  
15          2)     Settlement Agreement - §2, pp. 3-6-a - the Settlement Agreement provides  
16                  that Qwest will make voluntary contributions towards infrastructure  
17                  investment in unserved and underserved areas throughout Arizona. *RUCO*  
18                  *recommends a commitment from Qwest of an acceptable timetable when*  
19                  *broadband services will be available in the underserved areas.* RUCO  
20                  makes this recommendation because of Qwest's previous promises and the  
21                  lack of any future timetable for Qwest to comply (See Qwest's statements  
22                  regarding the deployment of broadband referred to earlier in my testimony  
23                  and in the merger docket).



1           Moreover, RUCO would also note that Qwest's contributions to implement  
2           infrastructure in underserved areas is nothing more than what Qwest has  
3           promised before and is responsible for doing. If Qwest is going to be able to  
4           use penalty money toward something it has already committed to do, the  
5           Commission should at minimum prescribe a timetable and hold Qwest to its  
6           word.

7  
8           3) Settlement Agreement - § 2, pp. 3-6 – the Settlement Agreement is silent as  
9           to whether Qwest will be able to earn a return on its voluntary contributions.  
10          *So that there is no misunderstanding, the Commission should include in its*  
11          *Order an explicit provision that Qwest will not be able to earn a return on its*  
12          *"voluntary contributions."* Qwest should not be able to earn a return on any  
13          of the investments that it makes via the voluntary contributions, any recovery  
14          of which would also violate the spirit of the Settlement Agreement. Here, the  
15          Commission's intent should be to use the voluntary contributions to improve  
16          telecommunication services throughout this state. Were Qwest permitted to  
17          earn a return on any of this portion of the Settlement Agreement, it would  
18          offset the true amount of dollars being contributed so that less than the full  
19          amount that the Commission intended would really be "contributed."

20  
21       Q.     Does this conclude your testimony?

22       A.     Yes.  
23

# EXHIBIT

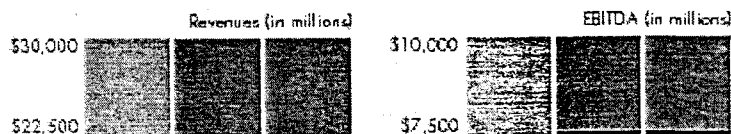
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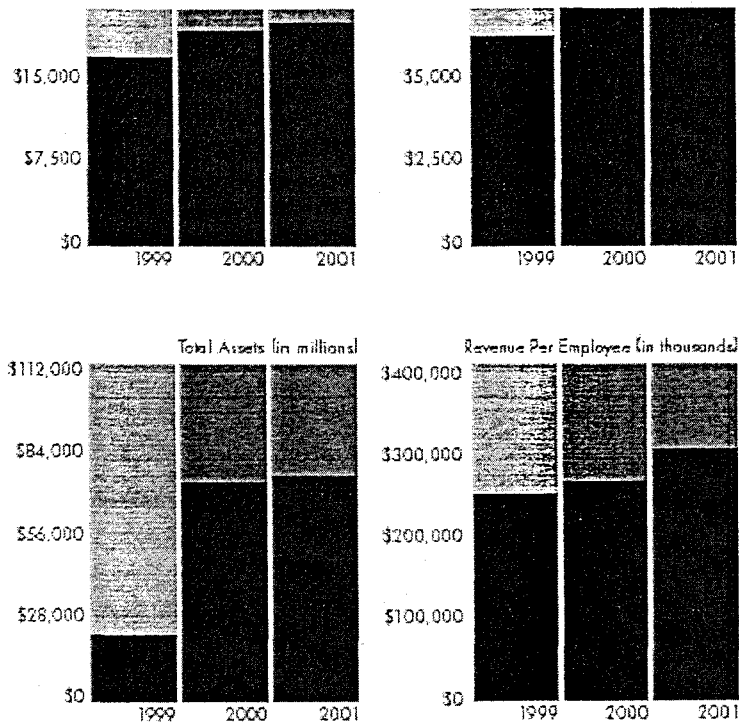


# Financial Highlights

Years ended December 31, (in millions, except per share and revenue per employee data)	2001	2000	1999
<b>Revenue<sup>(1)</sup></b>			
Commercial services	\$ 11,118	\$ 10,466	\$ 8,297
Consumer services	5,900	5,674	5,375
Directory services	1,604	1,530	1,436
Switched access services	1,073	1,234	1,486
	\$ 19,695	\$ 18,954	\$ 16,594
<b>EBITDA<sup>(1)(2)</sup></b>	7,353	7,368	6,292
<b>Total assets<sup>(3)</sup></b>	73,781	73,501	23,272
<b>Pro forma operating income<sup>(4)</sup></b>	2,266	3,303	2,475
<b>Revenue per employee</b>	\$305,000	\$265,000	\$230,000
<b>EPS-reported<sup>(5)(6)</sup></b>			
Basic	\$ (2.42)	\$ (0.06)	\$ 1.54
Diluted	(2.42)	(0.06)	1.52
<b>EPS-pro forma<sup>(5)(6)</sup></b>			
Basic	\$ 0.04	\$ 0.60	\$ 0.41
Diluted	0.04	0.59	0.39
<b>Diluted cash EPS<sup>(5)(6)(7)</sup></b>	0.75	1.25	1.08

(1) 2001 amounts represent actual reported results prepared in accordance with generally accepted accounting principles. Unaudited pro forma results for 2000 and 1999 reflect the impact of the Qwest/U S WEST merger as though the merger had occurred as of the beginning of the periods presented. Certain reclassifications have been made to prior year balances to conform to the current year presentation. (2) The 1999 figure reflects U S WEST results only. (3) Results for all years presented have been adjusted for certain non-recurring and non-operating items. See Management's Discussion and Analysis of Financial Condition and Results of Operation on page 43 for a discussion of these non-recurring and non-operating items. (4) Earnings per share calculations for 2000 and 1999 reflect the conversion of each share of U S WEST common stock into 1.72932 shares of Qwest common stock. (5) Earnings before interest, income taxes, depreciation and amortization ("EBITDA") does not include non-recurring and non-operating items such as restructuring charges, Merger-related and other charges, asset write-offs and impairments, gains/losses on the sale of investments and fixed assets, gains/losses on sales of rural exchanges, changes in the market values of investments, one-time legal charges, Separation charges, certain regulatory rate refunds and sales of local telephone exchanges. EBITDA does not represent cash flow for the periods presented and should not be considered as an alternative to net earnings (loss) as an indicator of the Company's operating performance or as an alternative to cash flows as a source of liquidity, and is not necessarily comparable with EBITDA as defined by other companies. (6) Pro forma diluted cash earnings per share represent diluted earnings per share adjusted to add back the after-tax amortization of goodwill and other intangible assets.





2001 Annual Report





BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
Chairman

JAMES M. IRVIN  
Commissioner

WILLIAM MUNDELL  
Commissioner

JEFF HATCH-MILLER  
Commissioner

MIKE GLEASON  
Commissioner

IN THE MATTER OF QWEST CORPORATION'S	)	Docket No. RT-00000F-02-0271
COMPLIANCE WITH SECTION 252(E) of the	)	
TELECOMMUNICATIONS ACT OF 1996	)	
<hr/>		
IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S	)	Docket No. T-00000A-97-0238
COMPLIANCE WITH SECTION 271 OF THE	)	
COMMUNICATIONS ACT OF 1996	)	
<hr/>		
ARIZONA CORPORATION COMMISSION,	)	Docket No. T-01051B-02-0871
Complainant,	)	
	)	
v.	)	
	)	
QWEST CORPORATION,	)	
Respondent	)	
<hr/>		

NOTICE OF FILING TESTIMONY OF MICHAEL L. HAZEL

Mountain Telecommunications, Inc. ("MTI"), hereby files the Testimony of Michael L. Hazel on Behalf of Intervenor, Mountain Telecommunications, Inc., in Opposition to Proposed Settlement Agreement in the above-captioned matter.

Respectfully submitted,

Mitchell F. Brecher  
GREENBERG TRAURIG, LLP  
800 Connecticut Avenue, NW  
Washington, DC 20006  
(202) 331-3100

August 29, 2003

1                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **MARC SPITZER**  
3     **Chairman**

4 **JAMES M. IRVIN**  
5     **Commissioner**

6 **WILLIAM MUNDELL**  
7     **Commissioner**

8 **JEFF HATCH-MILLER**  
9     **Commissioner**

10 **MIKE GLEASON**  
11     **Commissioner**

12 IN THE MATTER OF QWEST CORPORATION'S     ) Docket No. RT-00000F-02-0271  
13 COMPLIANCE WITH SECTION 252(E) of the     )  
14 TELECOMMUNICATIONS ACT OF 1996     )  
15 \_\_\_\_\_ )

16 IN THE MATTER OF U S WEST COMMUNICATIONS, ) Docket No. T-00000A-97-0238  
17 INC.'S COMPLIANCE WITH SECTION 271 OF THE )  
18 COMMUNICATIONS ACT OF 1996     )  
19 \_\_\_\_\_ )

20 ARIZONA CORPORATION COMMISSION,     ) Docket No. T-01051B-02-0871  
21   Complainant,     )  
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26 QWEST CORPORATION,     )  
27   Respondent     )  
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1 **Q 1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND CURRENT**  
2 **POSITION.**

3 A 1. My name is Michael L. Hazel. My business address is 1430 W. Broadway, Suite A200,  
4 Tempe, Arizona 85282. I am Vice President, Network, Mountain Telecommunications, Inc.  
5 (MTI).

6 **Q 2. WHAT ARE YOUR CURRENT RESPONSIBILITIES?**

7 A 2. I am responsible for management and operation of the MTI network, including the  
8 deployment and operation of existing voice and data network switching and transmission  
9 facilities. This includes more than 3,000 modems online with Internet service providers. My  
10 duties include the procurement of interconnection facilities and circuits and the management of  
11 MTI's use of Qwest network facilities and services. In addition, I audit and verify the invoices  
12 which Qwest renders to MTI for network services and facilities. I also work with management  
13 and with outside legal counsel in analyzing regulatory proceedings which affect MTI's interests  
14 and manage MTI's participation in such proceedings, where appropriate.

15  
16 **Q 3. PLEASE DESCRIBE YOUR PRIOR PROFESSIONAL EXPERIENCE AND POST-  
SECONDARY EDUCATION?**

17 A 3. Attached to this testimony as Attachment 1 is a resume which describes my prior  
18 employment and education.

19 **Q 4. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THE COMMISSION?**

20 A 4. Yes. I submitted direct testimony and rebuttal testimony in the so-called "mini-docket"  
21 conducted by the Commission in Docket No. T-00000A-00-0194. I also submitted testimony in  
22 the Show Cause proceeding (Docket No. T-01051B-02-0871).

23 **Q 5. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

24 A 5. The purpose of my testimony is to explain to the Commission why the proposed settlement  
25 agreement jointly submitted by MTI and Qwest is not in the public interest, does not sufficiently

1 address and rectify the conduct which led to the three docketed proceedings which are the  
2 subject of the settlement agreement, and should not be approved by the Commission.

3 **Q 6. HAS MTI PARTICIPATED IN ANY OF THE THREE CAPTIONED DOCKETED**  
4 **PROCEEDINGS?**

5 A 6. Yes. MTI has intervened in Docket No. T-01051-02-0871 (Arizona Corporation  
6 Commission v. Qwest), the so-called "Show Cause" docket. As an intervenor, MTI submitted  
7 my testimony in that proceeding and submitted a post-hearing brief. It also participated in a  
8 series of meetings which were held in July 2003 following Qwest's and Staff's discussions of a  
9 proposed settlement agreement.

10 **Q 7. PLEASE EXPLAIN MTI'S REASONS FOR INTERVENING IN THE SHOW**  
11 **CAUSE DOCKET?**

12 A 7. On June 12, 2002, the Commission issued Order No. 64922 in Docket No. T-00000A-00-  
13 0194 Phase II (In the Matter of Investigation into Qwest Corporation's Compliance with Certain  
14 Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts). In  
15 that order, the Commission required Qwest to implement certain changes to its rates for  
16 unbundled network elements, including the rates to be charged for unbundled transport.  
17 Although that order became effective June 12, 2002 and Qwest was directed to set its rates in  
18 conformance with that order forthwith, it did not begin to render invoices based on the new rates  
19 until January 2003. When MTI began to receive its first invoices based on the new rates, it was  
20 shocked and dismayed to discover that the rates being charged to it for local transport had  
21 increased very significantly above the rates which had been in effect prior to the Phase II Order.  
22 The impact of these unexpected rate increases became even more pronounced several weeks later  
23 when Qwest began to invoice MTI the increased rates retroactively going back to June 12, 2002.  
24 At my direction, MTI applied to intervene in Docket No. T-00000A-00-0194 Phase II and in the  
25 Show Cause docket. Following receipt of MTI's intervention applications and a motion for



1 injunctive relief, Commission Staff conducted discovery. Based upon that discovery, Staff  
2 determined that Qwest had improperly charged certain purchasers of transport service rates  
3 which included charges for entrance facilities, even though those customers did not use entrance  
4 facilities. In short, Qwest was charging customers for facilities which it was not providing and  
5 which the customers were not using.

6 **Q 8. DID STAFF'S CONCLUSION LEAD TO FURTHER COMMISSION ACTION?**

7 A 8. Yes. On May 28, an expedited hearing was held on two issues regarding transport pricing.  
8 The first issue was to address which of two Staff-proposed alternatives should be used for  
9 adjusting the transport rates so as to ensure that transport customers not be charged excessive  
10 rates which included charges for facilities which they did not use. The second issue was to  
11 address whether the adjustments to the transport rates should be effective June 12, 2002 – the  
12 effective date of the Phase II Order. Following that hearing, post-hearing briefs were filed. To  
13 date, no action has been taken by the Commission in that proceeding.

14 **Q 9: HAS QWEST OBJECTED TO ADJUSTING THE TRANSPORT RATES?**

15 A 9. No. In the Mini-docket proceeding, Qwest expressed a preference for Staff Option 2 over  
16 Staff Option 1, but it has not objected to the proposition that adjustment to the transport rates  
17 would be appropriate.

18 **Q. 10 HAS QWEST OBJECTED TO ADJUSTING THE TRANSPORT RATES SO AS**  
19 **TO EXCLUDE ENTRANCE FACILITIES EFFECTIVE JUNE 12, 2002 – THE**  
20 **EFFECTIVE DATE OF THE PHASE II ORDER?**

21 A. 10. Yes. Qwest has vigorously opposed making such adjustment effective June 12, 2002 –  
22 the effective date of the Phase II Order. Throughout the Mini-docket proceeding in Phase II,  
23 Qwest objected to making any rate adjustment effective June 12, notwithstanding its own candid  
24 recognition that its rates included charges for entrance facilities not used by certain of its  
25 customers and notwithstanding the undisputed and undeniable fact that Qwest's delay of many

1 months before implementing the transport price hikes back to June 12, 2002 will result in  
2 substantial undeserved revenues to it. Indeed, during the discussions which were held between  
3 Staff, Qwest and intervenors regarding the Qwest-Staff proposed settlement, MTI specifically  
4 suggested that Qwest agree to modify its rates for transport service using either Staff Option 1 or  
5 Staff Option 2 proposed by Staff in Docket No. T-00000A-00-0194, effective June 12, 2002.  
6 That suggestion was summarily dismissed by Qwest.

7 **Q 11. ARE MTI'S CONCERNS REGARDING THE PRICING OF TRANSPORT**  
8 **WITHIN THE SCOPE OF THE ISSUES BEFORE THE COMMISSION IN THE SHOW**  
9 **CAUSE PROCEEDING?**

10 A 11. Yes. The underlying issue in the Show Cause proceeding is whether Qwest properly  
11 implemented the rate changes ordered by the Commission's Decision No. 64922. It is MTI's  
12 view that Qwest's development of transport rates which include charges for entrance facilities in  
13 circumstances where no such facilities are provided reflects an improper implementation by  
14 Qwest of the Phase II Order. More importantly, by delaying the implementation of the Phase II  
15 rate revisions until January 2003 – nearly seven months after that order's effectiveness, Qwest  
16 was able to “blindsides” customers of its transport services, including, *e.g.*, MTI. Thus, Qwest's  
17 treatment of transport pricing goes to the heart of the fundamental issue before the Commission  
18 in the Show Cause proceeding – whether Qwest has properly implemented the Phase II Order.

19 **Q 12. DOES THE PROPOSED SETTLEMENT SUFFICIENTLY REDRESS QWEST'S**  
20 **OVERCHARGING FOR TRANSPORT?**

21 A 12. No it does not. Under the proposed settlement agreement, Qwest's entire “penalty” for its  
22 improper implementation of the Phase II Order would be a payment in the amount of \$150,000  
23 to the State Treasurer (See Proposed Settlement Agreement at Section 1.  
24  
25

1 **Q 13. WHY IS THAT "PENALTY" INSUFFICIENT?**

2 A 13. There are two reasons. First, the payment will go to the State Treasurer, not to the entities  
3 who have been harmed by Qwest's excessive charges. Second, the "penalty" amount is a  
4 pittance as compared to the economic windfall which will be enjoyed by Qwest if it is permitted  
5 to retain the excessive transport rate revenues resulting from the rates which have been charged  
6 by it commencing June 12, and whenever the Commission acts on the effective date issue before  
7 it in the Mini-docket. As of August 20, 2003, the amount invoiced by Qwest to MTI in monthly  
8 recurring charges for transport based on Qwest's post-June 12, 2002 transport rates exceeds the  
9 rates which would have been charged under the pre-June 12, 2002 rates by \$822,293.10. In  
10 short, Qwest's windfall profit earned from one customer – MTI – would exceed the total amount  
11 of the "penalty" it would pay to the State Treasurer by more than 548 percent! I cannot imagine  
12 any company which would not be more than willing to make a "penalty" payment to the State in  
13 the amount of \$150,000 if it were permitted to retain for itself many times that amount in excess  
14 charges resulting from its improper implementation of rates based on a Commission order. The  
15 purpose of a penalty is to punish wrongdoing and to dissuade others from engaging in similar  
16 wrongdoing. Since the economic benefit to Qwest in this instance far outweighs the economic  
17 hardship which would be imposed by the penalty, the payment set forth in the proposed  
18 settlement agreement is wholly inadequate, would not compensate the victims of the improper  
19 charges, would not deter similar conduct in the future, and should not be approved by the  
20 Commission.  
21

22 **Q 14. ARE THERE OTHER REASONS WHY THE PROPOSED SETTLEMENT**  
23 **AGREEMENT SHOULD NOT BE APPROVED?**

24 A 14. Yes. The discount credit provisions which would be made available to Competitive Local  
25 Exchange Carriers (CLECs) are inadequate to fully compensate those CLECs for the economic

1 injury they have suffered as a direct and proximate result of the preferential treatment bestowed  
2 by Qwest upon two CLECs – Eschelon and McLeod – pursuant to its unfiled and unlawful  
3 agreements with those companies. For example, prior to those agreements, MTI provided certain  
4 services to McLeod. However, once McLeod was able to extract sharply discounted prices from  
5 Qwest in exchange for its silence in the Qwest Section 271 process, MTI was unable to retain  
6 that business. In short, MTI lost a significant customer and substantial revenues due entirely to  
7 Qwest’s unfiled agreement to provide special pricing to that customer. The one time ten percent  
8 discount credit to MTI on services purchased from Qwest subject to Section 251(b) and 251(c)  
9 will not fully compensate MTI for the revenues which it lost during the period that the Qwest –  
10 McLeod agreement was in effect.  
11

12 **Q 15. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 **A 15. Yes it does.**  
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# Attachment 1

# Michael Lee Hazel

Vice President, Network  
Mountain Telecommunications, Inc.

## Background

Mike Hazel joined MTI at the time of its founding and has been with the company since the beginning. Currently, Mike Hazel is Vice President, Network and manages network operations, including network deployment, operations and customer implementation. He is responsible for deployment and operation of the existing voice and data network including over 3,000 modems online with wholesale and collocated ISPs. His recent projects include completing migration from INP to LNP (first CLEC to complete in USW territories), deployment of ten rural collocations and negotiating the first Phase II, 4 -year Interconnect Agreement with the ILEC (Qwest).

Prior to joining MTI, Mike Hazel was responsible for integrating customer networks and applications into a cellular data network. His functions included Project Manager, WAN/LAN design and integration, application selection and optimization, internal and external support, presentation and training on CDPD, LAN, WAN and TCP/IP technologies. His prior primary responsibility was for selecting third-party hardware and software integrators and managing customer/vendor interaction. As part of this role, he was responsible for installation and support of gateways for legacy systems to interface with the CDPD network. The list of vendors included IBM, Motorola, AT&T, Novell, Microsoft, Lotus, SCO, PCSI, Sierra America, Cisco Systems and Bay Networks (Wellfleet). He was involved in the design, implementation, maintenance and troubleshooting of Local Area Networks and PCs. He also prepared existing networks for continuing maintenance contracts, including thorough documentation, debugging and stabilizing.

Mike Hazel has 20 years in the data and telecommunications field.

## Experience

1994-1997

Bell Atlantic Mobile Systems

### Systems Engineer

Integrated customer networks and applications with Bell Atlantic's Cellular Digital Packet Data (CDPD) Network. Functions included project management, WAN/LAN design and integration, application selection and optimization, internal and external support, presentation, and training on CDPD, LAN, WAN and TCP/IP technologies. Selected third-party hardware and software integrators and managed customer/vendor interaction. Installed and supported Gateways for legacy systems to interface with the CDPD network. The majority of CDPD hardware and software platforms implemented were first release or still in beta development. Vendors included IBM, Motorola, AT&T, Novell, Microsoft, Lotus, SCO, PCSI, Sierra Wireless, Cincinnati Microwave, Software Corporation of America, Cisco Systems and Bay (Wellfleet). Supported several customers through the process of designing and integrating IP based, routed networks into their legacy systems, including SNA, IPX, X.25 and NetBIOS/NetBEUI based LANs and WANs

1994

Preferred Computer Care

### Network Engineer

Designed, implemented, maintained and troubleshot LANs and PCs. Prepared existing networks for continuing maintenance contracts, including thorough documentation, debugging and optimizing.

1992-1993                      Offline Services

**Self-Employed Consultant**

Provided consulting services for small businesses to help them determine their hardware and software needs. Functions included network design and installation, programming and extensive troubleshooting.

1989-1993                      Maricopa County

**Operations Lead**

Supervised several operators supporting a DPS8(GCOS3), IBM 3090(MVS/XA), VAX6000(VMS) cluster and numerous PCs networked on Netware 3.11. Users environments included VT100-220, OS/2 PCs and IBM3270 terminals. Maintained external transport including Fiber, T1, DDs and 3002 circuits. Provisioned TCP/IP, IPX/SPX, SDLC, LAPB and DEC Ethernet protocols. Also trained on Netview, VTAM, CICS and DCL.

1988-1989                      Maricopa County

**Communications Technician**

Installed, maintained and repaired all aspects of network communication systems. Bench tested hardware such as modems, MUXs and terminal controllers. Configured terminal, communications and FNP equipment. Supported Synchronous, Asynchronous and BiSynchronous transports.

1983-1988                      Maricopa County

**Mainframe Operations**

Operated H6680(GCOS3), DPS8(GCOS3) and DPS6(GCOS6) mainframe computers primarily in a batch environment with emphasis on communications and training of new operators. Performed periodic system saves, restores and recoveries.

1979-1981                      U.S. Air Force

**HQ Mainframe Operator**

Operated two H6060 mainframe systems with emphasis on WWMCCS. Ensured timely throughput of nightly production runs, performance of nightly saves as well as periodic systems saves, restores and recoveries. Maintained, saved and established mainframe configurations.

**Education /  
Certifications**

- Gateway College – VTAM Operations, REXX Programming, CICS Overview Operation, TXO/ISPF, MVS JCL, VAX DCL
- Phoenix College – COBOL programming
- USAF Technical Training – H6000 Mainframe Operations, PDP-11 and WW Operations
- AST Server Support
- Microsoft Product Specialist (13822)
- Novell CNE (#6217342), Novell CNA v3.11

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing Testimony of Michael L. Hazel on Behalf of Mountain Telecommunications, Inc., in Opposition to Proposed Settlement Agreement, on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid on the following:

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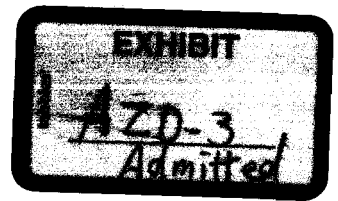
11 Dated at Washington, D.C. this 29<sup>th</sup> day of August, 2003.

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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
Chairman  
JIM IRVIN  
Commissioner  
WILLIAM A. MUNDELL  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
MIKE GLEASON  
Commissioner

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IN THE MATTER OF QWEST CORPORATION'S  
COMPLIANCE WITH SECTION 252(e) OF THE  
TELECOMMUNICATIONS ACT OF 1996.

Docket No. RT-00000F-02-0271

IN THE MATTER OF US WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH SECTION 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996.

Docket No. T-00000A-97-0238

ARIZONA CORPORATION COMMISSION,

Docket No. T-01051B-02-0871

Complainant,

v.

QWEST CORPORATION,

Respondent.

TESTIMONY OF

THOMAS W. BADE

ON BEHALF OF ARIZONA DIALTONE, INC.

AUGUST 27, 2003

## EXECUTIVE SUMMARY

Thomas W. Bade is the President of Arizona Dialtone, Inc., a CLEC that resells Qwest lines to independent payphone owners and to residential customers under a prepaid residential plan. In his testimony, Mr. Bade describes some very basic concepts that should be present in any settlement: The disputed claims should be resolved. There should be appropriate compensation for the claims that are being released. And the participants should know what they are getting and what they are giving up. The proposed Settlement fails in every category.

Arizona Dialtone has asked Qwest to clarify the terms of the proposed Settlement and to answer its questions and concerns, but Qwest has not been forthcoming with the information. Instead, Qwest filed evasive testimony that explains nothing. Qwest submitted no data regarding the amount of credit claims it expects to receive, or schedules of the amounts Qwest records show various CLECs should receive in credits. Qwest has not clarified which services it considers to be included and which are not included in the 10% discount credits. And Qwest gives no explanation of the scope of the release that it requires from the CLECs. In essence, Qwest is asking the Commission to "just trust us to interpret it later."

Mr. Bade also gives an overview of Qwest's historic mistreatment of competitors including CLECs and payphone owners: Qwest's wrongful actions have ultimately delayed benefits to the Arizona ratepayers—such as price reductions and service improvements—that would otherwise flow from a properly functioning competitive market. Qwest's secret agreements and willful failures to timely implement wholesale services and pricing changes have unlawfully hindered competition. More particularly, Qwest's unlawful actions have caused Arizona Dialtone to incur increased costs and lost revenues, and Qwest has prevented and delayed Arizona Dialtone from implementing new and innovative residential services in Arizona.

Mr. Bade also describes inequities in the structure of the proposed Settlement, and he recommends the following changes:

- The releases should be narrowly defined as only relating to the particular issue that is the basis of each CLEC credit basket, and they should be limited to the specific time period for each category of credit.

- The caps placed on the CLEC credits should be eliminated. They are not supported in the record, and they only serve to reduce Qwest's liability at the expense of the CLECs that it harmed.

- The resold services that are not intended to be included in the 10% discount credits should be listed in the Settlement so that everyone knows which services are subject to the discounts and which services are not.

- The CLEC credits should be based on time periods beginning after Qwest stopped its discriminatory conduct. Qwest should not be rewarded for hindering competition. This change would allow participation in the CLEC credits at a level of competition that would have existed but for Qwest's wrongful conduct, instead of limiting their participation to a level that existed with Qwest's wrongful conduct.

- The duration of the CLEC credits should be extended to the full five-year term of the secret agreements. Qwest should not be allowed to cut off its liability to the harmed CLECs by paying its favored CLECs for early termination of the discriminatory agreements.

- The CLEC credits should be changed to cash payments instead of credits. This will prevent Qwest from enjoying any benefit from wrongfully driving CLEC's out of business.

- The CLECs should not be required to provide evidence of Qwest's inaccurate DUF records. Qwest is the party with the most knowledge about inaccuracies in its DUF records.

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1 **INTRODUCTION.**

2 **Q. WILL YOU STATE YOUR NAME AND ADDRESS?**

3 A. My name is Thomas W. Bade. My business address is 7170 West Oakland, Chandler, AZ  
4 85226.

5  
6 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR PRESENT  
7 POSITION?**

8 A. I am currently employed by Arizona Dialtone, Inc. as its President.  
9

10 **Q. BRIEFLY EXPLAIN ARIZONA DIALTONE, INC.'S BUSINESS?**

11 A. Arizona Dialtone, Inc. is a competing local exchange carrier ("CLEC") and provides local  
12 exchange carrier services as a reseller. Arizona Dialtone currently resells approximately  
13 8,900 telephone lines in Arizona, of which 8,500 are lines purchased from Qwest. The  
14 majority of Arizona Dialtone's lines are payphone lines, resold to independent payphone  
15 owners. Although it is a much smaller part of Arizona Dialtone's business, we also resell  
16 residential lines under a prepaid residential service tariff. Of the total Arizona lines,  
17 8,000 are payphone lines and 900 are residential lines.  
18

19 **Q. BRIEFLY STATE YOUR EDUCATIONAL BACKGROUND AND WORK  
20 EXPERIENCE?**

21 A. I have 4 years of college education in business administration and accounting at  
22 Rockhurst College, Kansas City, Missouri and Thomas More College, Ft. Mitchell,  
23 Kentucky, 1968-1972. From 1973 through 1989, I was a consultant for Safeguard  
24 Systems, Ft. Myers, Florida, where I installed accounting and finance controls in small to  
25 medium sized businesses. In 1990, I managed Diego's Cantina, a restaurant in Tempe,  
26 Arizona. My employment in the telephone industry began in 1991. I have installed and

1 maintained call processing systems in hotels and worked in the pay telephone industry  
2 managing GCB Communications, Inc., an independent pay telephone provider. For the  
3 past 5 years I have been employed by Arizona Dialtone, Inc., initially as its Vice-  
4 President in charge of operations, and since January of this year I have been its President.  
5

6 **Q. WHAT ARE YOUR PRESENT JOB RESPONSIBILITIES?**

7 A. In my current position as President, I oversee all aspects of Arizona Dialtone's business  
8 including financial planning, regulatory affairs, and day to day general operations such as  
9 coordination of billings, accounts payable and receivable, sales and marketing.  
10

11 **OVERVIEW.**

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. The purpose of my testimony is to explain how Qwest—through its unlawful secret  
14 agreements and unreasonable delays—stifled competition in Arizona for an extended  
15 period of time. As a direct result of Qwest's conduct, the Arizona ratepayers have been  
16 deprived of the benefits that they had a right to expect from the promised (but  
17 undelivered) opening of the LEC market to nondiscriminatory competition.  
18

19 I will also explain how the proposed Settlement as it is currently worded is not in the  
20 public interest. The interpretation of its ambiguous terms will most likely create more  
21 litigation. It rewards Qwest for unlawfully delaying competition in Arizona, instead of  
22 discouraging such conduct. And the participants cannot determine what they are getting  
23 and what they are giving up.  
24

25 I will also explain the following recommended changes to the proposed Settlement:  
26

1           ●       By basing the time periods for the CLEC credits on the same time periods as  
2       Qwest's anti-competitive secret agreements, the proposed Settlement rewards Qwest's  
3       efforts to unlawfully discriminate against its competitors. Instead, the caps on the CLEC  
4       credits should be eliminated and the time periods for the credits should be for the full  
5       original duration of the secret agreements, and they should start after Qwest terminated its  
6       discriminatory conduct. This will base the credits on a level of competition that should  
7       have existed but for Qwest's discriminatory conduct, instead of on the level of  
8       competition that existed with the discriminatory conduct.

9  
10          ●       The CLEC credits should be cash payments instead of credits so as to not reward  
11       Qwest for the CLECs that it has already driven out of business, and Qwest should not be  
12       allowed to apply any credits/payments against any outstanding bills that the CLEC has  
13       disputed. Also, the requirement for the CLECs to have evidence of inaccurate DUF  
14       records should be eliminated.

15  
16          ●       The Settlement should specify exactly which services purchased by the CLECs are  
17       not eligible for the 10% discount credit. Instead, the proposed settlement rolls the  
18       interpretation of particular sections of the '96 Telecom Act back to 2001, and it leaves  
19       these issues to be interpreted through future litigation. There should be specific schedules  
20       with specific dollar amounts to specific CLECs that Qwest acknowledges as undisputed,  
21       according to its business records.

22  
23          ●       The scope of the releases included under the CLEC credits sections should be  
24       defined with more certainty. They are currently defined only by the very broad scope of  
25       the Commission's Dockets, which leaves the CLECs unable to evaluate the claims that  
26       they are releasing should they choose to participate in the Settlement.



1  
2  
3 **Q. WHAT IS IT ABOUT THE PROPOSED SETTLEMENT THAT IS TROUBLING**  
4 **TO ARIZONA DIALTONE?**

5 A. Any good settlement agreement should exhibit several very basic concepts. It should put  
6 the disputed claims to rest, cleanly and clearly. It should provide appropriate  
7 compensation for the claims that are being released. And the participants should know  
8 what they are getting and what they are giving up. It does not take an attorney to  
9 understand these basic principles. But the proposed Settlement does none of these things.

10  
11 The proposed Settlement is far from clearly worded. The overbroad and unclarified  
12 clauses that it contains will most likely cause more litigation. The testimony that Qwest  
13 has filed does nothing to clarify the intent of the proposed Settlement, and it fails to offer  
14 any assistance for evaluating its impact on the CLECs that may choose to participate.  
15 Also, the proposed Settlement is structured in a way that rewards Qwest's wrongful  
16 conduct instead of discouraging such actions. The proposed Settlement, without major  
17 modifications and clarifications, is not in the public interest.

18  
19 For example, at the scheduling conference in this Docket held August 5, 2003, Arizona  
20 Daltone's counsel requested that Qwest's testimony include projections on the amount of  
21 claims Qwest expects under each basket of credits, and that it explain the scope of the  
22 releases. This very basic information is needed for the CLECs to evaluate what they were  
23 getting and what they were giving up. Additionally, we also had our attorney Martin  
24 Aronson meet directly with Todd Lundy of Qwest in Denver on August 11, 2003, before  
25 Qwest's testimony was due. At this face to face meeting Mr Aronson reiterated our  
26 questions and concerns with the proposed Settlement. He specifically described to Mr.

1 Lundy the Qwest services and the total amount of Arizona Dialtone charges that we  
2 interpret as falling within the 10% discount credits, and he asked Mr Lundy to confirm  
3 the total amount of 10% discount credits that we expected to receive under the proposed  
4 Settlement. Mr. Aronson also has given Mr. Lundy documentation relating to Arizona  
5 Dialtone's CC&N application and its interconnection agreement with Qwest, and he has  
6 asked Mr. Lundy to confirm that Qwest considers Arizona Dialtone to be an eligible  
7 CLEC under the proposed Settlement. But to date, the only response we have received  
8 from Qwest is a very brief letter stating there "may be" an issue and the questions of  
9 compensation to Arizona Dialtone under the proposed Settlement remain open.  
10 Unfortunately, this is typical of the pattern over the years of Qwest failing to give Arizona  
11 Dialtone straight answers or to treat it fairly.

12  
13 Further, the Testimony of David Ziegler filed by Qwest addresses none of these issues.  
14 Mr. Ziegler's testimony—with its repeated qualifications that he is not offering any legal  
15 interpretations—can only be described as evasive. In essence, Qwest is saying to the  
16 Commission: "Just trust us to interpret the Settlement in the future." But Qwest has  
17 amply demonstrated that it is not to be trusted to interpret anything fairly.

18  
19 The proposed Settlement is not in the public interest, and it should not be approved by the  
20 Commission.

21  
22 **ARIZONA DIALTONE AND THE HISTORY OF QWEST'S MISTREATMENT OF  
COMPETITION.**

23 **Q. EXPLAIN THE HISTORY OF ARIZONA DIALTONE, INC.'S BUSINESS?**

24 **A.** First, Arizona Dialtone specializes in service to independent payphone owners. In the  
25 early years, prior to the 1996 Telecom Act, the independent payphone owners faced  
26 enormous hurdles when they tried to enter the market in competition with the incumbent

1 LECs. Before the invention of smart payphones, Qwest and the other incumbent LECs  
2 were the only payphone providers in the market. They simply would not provide the use  
3 of their central office controlled coin lines to anyone but themselves. But with the  
4 invention of a smart payphone (a payphone that can operate without any special central  
5 office coin metering and controlling equipment) anyone could, at least in theory, compete  
6 with the incumbent LECs by hooking a smart payphone up to a simple POTS line.  
7

8 However, it was not that simple. In order to protect their monopoly on payphones, Qwest  
9 and many of the other incumbent LECs fabricated one barrier after another, making it as  
10 difficult as possible for an independent payphone owner to establish a viable business.  
11 Qwest charged drastically high rates for the dialtone service, and it cross-subsidized its  
12 own payphones. It imposed End User Common Line Charges on the independent  
13 payphone lines when it did not charge them to its own lines, and it imposed similar  
14 discriminatory treatment through its yellow pages division. Even though Qwest has been  
15 ordered by the FCC several times to refund the EUCL charges from prior to 1997 to the  
16 payphone owners, to this day, it has refused to do so. It also imposed onerous credit  
17 requirements, refused to provide computerized billing, and refused or failed to provide  
18 adequate fraud protection on the independents' lines.  
19

20 In 1996, Congress made sweeping changes in the independent payphone market. The  
21 Telecommunications Act of 1996 required Qwest and the other incumbent LECs to stop  
22 many of their discriminatory actions against the independent payphone providers, and it  
23 mandated the opening of the LEC services market to competition. Arizona Dialtone  
24 looked on the independent payphone providers as an opportunity to enter the competitive  
25 LEC services market, and it set out to service that sector of the market.  
26

1 In June of 1998, Arizona Dialtone negotiated an interconnection agreement with Qwest,  
2 and in September of that year Arizona Dialtone began reselling Qwest lines to  
3 independent payphone providers. From the beginning, we requested that Qwest provide  
4 these lines through unbundled network element (UNE) pricing, just like it did for  
5 business or residential phone lines. But Qwest insisted that it did not have to provide  
6 UNE pricing for its payphone lines, and it refused to do so. Instead, Qwest limited its  
7 payphone lines to its wholesale discount pricing, and it set the discount at the same  
8 percentage that it had tariffed for a business line. This refusal of Qwest to implement  
9 UNE for payphone lines meant that Arizona Dialtone had very limited flexibility in  
10 pricing and provisioning its payphone lines. Also, for Arizona Dialtone, Qwest's refusal  
11 to provide UNE for our core business, in essence, excluded Arizona Dialtone from the  
12 prepaid residential service market. The added flexibility of UNE is almost an absolute  
13 necessity for the residential market because the wholesale discount for residential lines is  
14 only 12%.

15  
16 Arizona Dialtone's business began small. For example, in mid 2000, when Qwest began  
17 entering into its secret agreements with its major CLECs, Arizona Dialtone only had 3000  
18 lines. We focused our efforts on the independent payphone owners, offering them the  
19 service that Qwest had failed to give them. We provided billing statements in a form that  
20 the payphone owners could work with, and we provided credit terms that our customers  
21 could meet. But most of all we worked as a knowledgeable and experienced buffer  
22 between the independent payphone owners and the cumbersome, confusing and all too  
23 often non-responsive service departments within Qwest. In essence, Arizona Dialtone  
24 provides the service that independent payphone owners have been seeking for many  
25 years.

1 **Q. EXPLAIN ARIZONA DIALTONE'S PREPAID RESIDENTIAL PHONE**  
2 **SERVICE?**

3 A. Some key features of Arizona Dialtone's prepaid residential service include:

- 4 ● No deposit, no contract.
- 5 ● Pay as you go for one month at a time.
- 6 ● One-time \$55 connection fee.
- 7 ● Local calling only—no surprise long distance bills. (Customers can use prepaid  
8 calling cards to make long distance calls.)

9  
10 The service is provided on a prepaid month to month basis. Billing for the next month is  
11 sent fifteen days before the monthly anniversary date, and the payment for the next month  
12 of service is due before the end of the current monthly billing cycle. If the customer fails  
13 to pay for the next month of service, Arizona Dialtone notifies the customer and gives a  
14 five day grace period to pay the bill. Then if the account is not paid, the phone is  
15 disconnected. Disconnects have been very light, typically only two or three per month.

16  
17 Many of Arizona Dialtone's residential customers are lower income households that  
18 cannot afford the deposit that Qwest requires, or they have been refused service by  
19 Qwest. Arizona Dialtone offers these customers their only viable option for obtaining  
20 telephone service in their home. About half are Spanish-speaking, and most new  
21 customers (90% or more) fear losing their current Qwest service or they have no  
22 telephone service at all at the time they obtain service from Arizona Dialtone. Arizona  
23 Dialtone uses several check cashing and wireless stores as customer payment locations,  
24 and we are in the process of opening a store at 27th Avenue and Thomas that is dedicated  
25 to offering this service.  
26

1 Our residential customers are located all across the Phoenix metropolitan area and we  
2 also have residential subscribers in other areas of the State including: Casa Grande,  
3 Florence, Tucson, Yuma, etc.  
4

5 **Q. HOW MUCH OF THE INDEPENDENT PAYPHONE MARKET DOES**  
6 **ARIZONA DIALTONE SERVICE?**

7 A. Arizona Dialtone currently provides 8000 payphone lines in Arizona, which includes  
8 most of the independent payphone providers' lines. However, it is difficult to quantify the  
9 exact numbers. Qwest does not readily publish statistics on the number of payphone lines  
10 that it provides. However, because Qwest provides dialtone to its own payphones, it  
11 certainly still serves a majority of payphone lines in Arizona. Based on information in  
12 various filings made by Qwest in the late 1990's, I believe that at that time Qwest had  
13 approximately 24,000 payphone lines. But that number is beginning to be a bit dated, and  
14 I have no way of providing a good estimate of how much it may have changed over the  
15 ensuing years.  
16

17 My conclusion that Arizona Dialtone services the majority of the independent payphone  
18 market is based on my personal knowledge of the independent payphone market and on  
19 estimates of the size of the Arizona market obtained through trade associations like the  
20 Arizona Payphone Association and the American Public Communications Council.  
21

22 **ADVERSE IMPACTS OF QWEST'S WRONGFUL ACTIONS.**

23 **Q. HAS ARIZONA DIALTONE EXPERIENCED DELAYS IN QWEST'S**  
24 **IMPLEMENTATION OF WHOLESALE SERVICES AND PRICING CHANGES?**

25 A. Yes. Although the '96 Telecom Act required Qwest to make unbundled network  
26 elements available to CLECs, Qwest delayed its implementation of UNE for payphone

1 lines until 2002. This delay by Qwest in allowing payphone lines under UNE kept  
2 Arizona Dialtone's payphone lines priced artificially high throughout this time period, and  
3 it also substantially delayed Arizona Dialtone's entry into the prepaid residential phone  
4 service market.

5  
6 The '96 Telecom Act required Qwest and the other incumbent LECs to make the  
7 unbundled network elements needed for competition in the payphone market available to  
8 CLECs. Although we were requesting UNE, Qwest refused to provide it and insisted that  
9 it did not have to make UNE available for payphone lines. Eventually, another CLEC,  
10 Ernest Communications, filed a formal complaint with the FCC seeking to compel Qwest  
11 to furnish unbundled network elements for payphone lines. Qwest eventually relented,  
12 and as part of a settlement of the formal FCC Complaint, Qwest agreed to allow its UNE  
13 to be utilized for payphone lines. This settlement occurred in June of 2001, but even after  
14 agreeing to do so, Qwest took more than six more months before converting Arizona  
15 Dialtone's lines to UNE-P. In December 2001, over three years after Arizona Dialtone  
16 began operations, Qwest finally converted a few of its payphone lines to UNE-P, and the  
17 bulk of Arizona Dialtone's lines were not converted to UNE until as of January of 2002.

18  
19 **Q. EXPLAIN HOW QWEST'S DELAYS IN IMPLEMENTING UNE FOR ARIZONA**  
20 **DIALTONE'S PAYPHONE LINES ADVERSELY AFFECTED ARIZONA**  
21 **DIALTONE'S ENTRY INTO THE RESIDENTIAL BUSINESS?**

22 **A.** From the beginning, Arizona Dialtone planned to compete with Qwest in the residential  
23 market by offering a prepaid residential service plan. Arizona Dialtone included this  
24 prepaid residential service in its initial tariff filed with the Commission in 1998.  
25 However, to effectively compete with Qwest's residential service, Arizona Dialtone must  
26 utilize unbundled network elements in provisioning its lines. But reselling lines under the

1 complex regulations that govern UNE involves a substantial learning curve which makes  
2 starting up a business under UNE a costly and time-consuming affair.

3  
4 The economies of scale necessary to justify the cost of billing more than one thousand  
5 different IXC/CIC codes under UNE are simply not present with only a few hundred  
6 residential lines. The only way that Arizona Dialtone could justify starting up a UNE  
7 operation was through our core business in payphone lines. We knew that the market for  
8 payphone lines existed with the independent payphone providers. Qwest, through its  
9 prior mistreatment of the independent payphone owners, had already prepared that market  
10 for anyone willing to service it, and Arizona Dialtone was ready to do so.

11  
12 On the other hand, the market for prepaid residential service was much different. Prepaid  
13 residential service was virtually unheard of in Arizona, as far as I knew. A few other  
14 CLECs had offered a similar service in other states and their results looked promising.  
15 But in Arizona, we knew of no preexisting demand ready to create any initial volume in  
16 this business. Instead, Arizona Dialtone would have to devote substantial resources to  
17 marketing in order to educate the public on the benefits of prepaid residential service and  
18 build up the demand gradually over time beginning at the initial level of zero customers.  
19 The substantial investment necessary to start up a UNE operation could not be justified  
20 when Qwest would only allow it to be used to support a very few prepaid residential  
21 lines. With Qwest refusing to allow UNE for payphone lines, the only way Arizona  
22 Dialtone could ever hope to recover its investment in a UNE operation would be to try to  
23 quickly build a demand for its prepaid residential services where none existed through  
24 even more expensive advertising. Therefore, until Qwest was finally persuaded to make  
25 UNE-P available for payphone lines and it got around to implementing it, Arizona  
26 Dialtone was unable to pursue its prepaid residential service.



1 **Q. WHEN QWEST CONVERTED ARIZONA DIALTONE'S PAYPHONE LINES TO**  
2 **UNE-P, DID IT AFFECT ARIZONA DIALTONE'S BUSINESS?**

3 A. Yes. As we expected, there was a learning curve involved, and it took several months for  
4 Arizona Dialtone to get its tracking and billing systems operational under the UNE-P  
5 scheme. But in early 2002 we had the bugs worked out of our systems and procedures,  
6 and when Qwest submitted its Compliance Filing to the Commission, Arizona Dialtone  
7 cut its payphone line pricing by approximately 25%.

8  
9 Then, in the second half of 2002, utilizing the experience we gained with UNE-P on the  
10 payphone lines and with a UNE system up and operating, we tried to turn our attention to  
11 pursuing the prepaid residential market more aggressively.

12  
13 **Q. HOW DID QWEST'S DELAYS IN IMPLEMENTING THE UNE-P PRICING**  
14 **ORDER AFFECT ARIZONA DIALTONE?**

15 A. As I explained earlier, Arizona Dialtone had promised its customers a substantial  
16 reduction in rates. But when Qwest failed to implement its pricing changes in its  
17 Compliance Filing, Arizona Dialtone had no commensurate reduction in costs. Therefore  
18 Arizona Dialtone had to manually review each Qwest phone bill for each of its lines, and  
19 recalculate the charges based on Qwest's new rates that they had failed to implement. We  
20 were forced to spend hundreds of hours manually recalculating the bills and disputed the  
21 overcharges so we could pay Qwest the amounts that it should have billed under its  
22 Compliance Filing. This went on for many months until Qwest finally decided to  
23 implement its new pricing, and then in 2003, Qwest finally got around to crediting  
24 Arizona Dialtone with the overcharges that we had disputed. This again caused Arizona  
25 Dialtone to delay its efforts in the prepaid residential market and caused significant  
26 uncertainties in our cost structure for yet another six months or so.

1 **Q. HOW HAS ARIZONA DIALTONE'S ENTRY INTO THE PREPAID**  
2 **RESIDENTIAL MARKET GONE SINCE QWEST FINALLY STRAIGHTENED**  
3 **OUT ITS UNE-P PRICING?**

4 A. Although we certainly do not yet have anywhere near enough residential lines to consider  
5 this sector of our business to be self supporting, we are encouraged by the growth rate in  
6 the demand. In January 2003 we only had 80 residential lines under our prepaid service  
7 plan, and we were delaying most of our marketing efforts in this area until we were able  
8 to resolve the issues with Qwest's improper pricing and its effect on our cost structure. In  
9 the first half of this year, we increased our marketing efforts and we now have 900  
10 prepaid residential lines and the demand for this service is growing every week.

11  
12 **Q. WOULD YOU HAVE OFFERED PREPAID RESIDENTIAL SERVICE EARLIER**  
13 **HAD QWEST NOT DELAYED ITS IMPLEMENTATION OF UNE FOR**  
14 **PAYPHONES AND NOT DELAYED ITS PRICING CHANGES?**

15 A. Yes, absolutely. As I explained earlier, we could not economically justify the investment  
16 necessary to establish reselling through UNE supported only by the minor start that we  
17 had in the residential market. From a business standpoint, we had to utilize our core  
18 business in payphone lines to justify the time and expense of converting to UNE. Had  
19 Qwest offered UNE for payphone lines from the beginning as it was required to do under  
20 the '96 Telecom Act, Arizona Dialtone would have been participating in the prepaid  
21 residential market several years earlier.

22  
23 **Q. DOES QWEST EMPLOY OTHER DISCRIMINATORY BEHAVIOR THAT,**  
24 **WHEN COUPLED WITH ITS SECRET AGREEMENTS AND DELAYS,**  
25 **IMPAIRS THE ABILITY OF SMALLER CLECS TO COMPETE WITH**  
26 **QWEST?**

1 A. Yes. Not only has Qwest discriminated against CLECs with its secret agreements and  
2 delays in offering wholesale services and price changes, but it stacks one discriminatory  
3 obstacle after another in the path of a CLECs' efforts to compete.

4  
5 For example, Qwest's service technicians apparently believe that a wire pair hooked up to  
6 a payphone is fair game for them to disconnect and use for a Qwest telephone line  
7 whenever there are no other pairs available at the location. We repeatedly lose service to  
8 our customers' payphones, only to find that Qwest has disconnected our customer's loop  
9 and used it for its own customer.

10  
11 Additionally, with Arizona Dialtone, Qwest refuses to accept automated orders for new  
12 payphone lines. It will not even accept an order by e-mail. Instead we must fax an order  
13 to them. Then they have to scan the order form into their computer system before their  
14 service personnel can retype it and implement it. This causes unnecessary delays in  
15 adding new lines and implementing service, and the faxing, scanning and retyping  
16 process results in illegible and mis-typed information that then must be clarified and  
17 corrected before the order can be properly implemented. This results in Qwest rejecting  
18 or improperly implementing a significant percentage of Arizona Dialtone orders. Also,  
19 Qwest charges Arizona Dialtone more for manual orders for new or converted lines (over  
20 \$15 more per line) than it would charge for automated orders. So, this is a double penalty  
21 to Arizona Dialtone (and its customers) through barriers to new lines and higher charges;  
22 and, the result is more anti-competitive impact by Qwest upon a CLEC and its customers.

23  
24 Another example is that Qwest refused to allow a PIC-freeze to be placed on Arizona  
25 Dialtone's lines. As a result, our customers experience PIC changes without their  
26 authorization and the resulting slamming on their long distance phone bills. Each time

1 this occurs, Arizona Dialtone has to spend the time and expense to investigate and correct  
2 the PIC, and we have created a dissatisfied customer in the process. There is an easy  
3 solution to this, place a PIC-freeze on the line and then the PIC cannot be changed  
4 without written authorization, which Qwest uses all the time for its customers. But it  
5 refuses to implement a PIC-freeze for Arizona Dialtone's lines and instead contends that  
6 the problem is covered because the PIC for all of Arizona Dialtone's lines cannot be  
7 changed without Arizona Dialtone's authorization. But the fact remains that Qwest does  
8 change the PIC on Arizona Dialtone's lines without written authorization to do so.

9  
10 Also, Qwest continually changes the service and sales managers for Arizona Dialtone's  
11 account. As soon as we work with one Qwest representative long enough for them to  
12 learn what is going on, they are replaced with a new person, and we move back to square  
13 one having to work through a learning curve with the new personnel.

14  
15 **Q. ARE YOU CONCERNED ABOUT OTHER ANTI-COMPETITIVE BEHAVIOR**  
16 **BY QWEST?**

17  
18 **A.** We hope Qwest will not try to "punish" us for this testimony, but we are very concerned.  
19 Given the history of anti-competitive behavior, and the apparent unwillingness of Qwest  
20 to make commitments now regarding the interpretation and specifics of the proposed  
21 Settlement, we are fearful that Qwest will continue to unfairly create problems for us both  
22 on a day-to-day operational level and a policy level.

23  
24 **INEQUITIES IN THE PROPOSED SETTLEMENT.**

25 **Q. HOW HAVE QWEST'S DELAYS IN OFFERING UNE FOR PAYPHONE LINES**  
26 **AND IN IMPLEMENTING THE UNE-P PRICING ORDER AFFECTED**

1           **ARIZONA DIALTONE'S POTENTIAL PARTICIPATION UNDER THE**  
2           **PROPOSED SETTLEMENT?**

3    A.    Qwest's conduct of delaying wholesale services and pricing creates several uncertainties  
4           and inequities in the proposed settlement.

5  
6           First, the 10% discount credits under Section 3 of the proposed settlement are limited to  
7           services purchased under "47 U.S.C. Sections 251(b) and (c) (as defined by the FCC for  
8           the relevant time period)." It has always been my position that the all of the payphone  
9           services that Arizona Dialtone has been reselling under its interconnection agreement  
10          with Qwest fall squarely within these statutory sections. But Qwest's past position that  
11          UNE is not available for payphone lines creates uncertainties about the position it will  
12          take now, and Qwest has never clarified whether it now concurs with our position. From  
13          the way the proposed settlement agreement is worded, we do not know whether Qwest  
14          will argue that payphone services do not fall within these code sections and that it has  
15          been offering wholesale payphone services to CLECs as a "mere accommodation," or  
16          whether it agrees that they are covered by Section 3 of the proposed settlement. The  
17          testimony of David Ziegler that Qwest filed in support of the proposed settlement with his  
18          multiple disclaimers that he is not offering any legal interpretations is certainly no help on  
19          this issue.

20  
21          The parenthetical, "(as defined by the FCC for the relevant time period)" is also very  
22          troubling. Based on this wording, apparently Qwest wants to turn the clock back to the  
23          2001 time frame to decide what services are included under § 251(b) and (c), working  
24          only from whatever FCC orders were outstanding at that time and ignoring any FCC  
25          interpretations that were issued later.

1 This ambiguous wording in Section 3 of the proposed settlement coupled with Qwest's  
2 past conduct regarding payphone lines creates an open invitation for future litigation. But  
3 it can easily be clarified. Qwest knows the services that the CLECs are reselling.  
4 Presumably, it also knows which services it intends this "§ 251(b) and (c) (as defined by  
5 the FCC for the relevant time period)" clause to exclude from the 10% discount credit  
6 under Section 3 of the proposed settlement. Instead of leaving such a critical but  
7 difficult-to-define parameter within the proposed Settlement Agreement, the agreement  
8 should simply specify the list of services that Qwest sold to CLECs that are not included  
9 in the 10% discount credits. And Qwest should be required to provide the 10% discounts  
10 credits for all other services purchased by the CLECs from Qwest. This straightforward  
11 clarification will provide Qwest and the Commission with certainty as to the overall  
12 impact of the settlement, and it will remove the uncertainty faced by Arizona Dialtone  
13 and the other CLECs in evaluating the 10% discount credits. There should be specific  
14 schedules sworn to by Qwest now in order to avoid problems or "game playing" later.

15  
16 Also, Qwest's delays in allowing UNE services to be utilized for payphone lines have  
17 squeezed Arizona Dialtone almost entirely out of being able to participate in the access  
18 line credits and UNE-P credits under Sections 4 and 5 of the Settlement. As I explained  
19 earlier, Qwest refused to allow UNE to be utilized with payphone lines until June 2001,  
20 and then it further delayed implementing the changes until January 2002. With the  
21 majority of Arizona Dialtone's lines having not been converted to UNE-P until January  
22 2002, this leaves Arizona Dialtone only able to participate in approximately two months  
23 worth of the Sections 4 and 5 credits under the proposed settlement.

24  
25 However, after reviewing the testimony submitted by Qwest, I am now uncertain as to  
26 whether Arizona Dialtone will be able to participate in even the last two months of the

1 Section 4 and 5 credits. Although this is not how the proposed settlement is worded,  
2 David Ziegler of Qwest, at pages 15 and 16 of his testimony, filed August 14, 2003, states  
3 that Qwest's intent is to refuse to provide Section 5 credits to any CLEC that was not  
4 billing interexchange carriers for access charges at that time. Arizona cannot meet his  
5 unwritten criteria. As I explained above, Arizona Dialtone's transfer to UNE-P did not  
6 occur instantaneously and there was a time period of several months before our access  
7 charge tracking system was in full operation. As a result, Arizona Dialtone was unable to  
8 bill the interexchange carriers during the first couple of months of its UNE-P operations  
9 which is the only time period included in the proposed settlement agreement as it is  
10 currently worded.

11  
12 Apparently, even though the proposed Settlement is not worded this way, it is Qwest's  
13 position that no Section 5 credits will be offered unless the CLEC was billing and  
14 collecting access charges at the time, and the CLEC can demonstrate that Qwest's daily  
15 usage file information was inaccurate. Mr. Ziegler does not explain in his testimony  
16 whether Qwest has a similar intent relating to the Section 4 credits as well. But I suspect  
17 it does. As a result, at least according to Mr. Ziegler's testimony, Arizona Dialtone will  
18 most likely not be able to participate at all in any of the Section 4 and 5 credits as the  
19 proposed Settlement is currently structured.

20  
21 **Q. WHAT CHANGES TO THE SETTLEMENT AGREEMENT DO YOU**  
22 **RECOMMEND TO ADDRESS THESE CONCERNS OF QWEST DELAYING**  
23 **THE ENTRY OF CLECS INTO THE VARIOUS LEC SERVICES MARKETS?**

24 **A.** Instead of setting the time periods for the Sections 3, 4 and 5 credit baskets based on the  
25 beginning of Qwest's wrongful secret agreements, the time periods should begin after the  
26 wrongful conduct. This change will remove the benefit otherwise granted to Qwest for

1 wrongfully delaying competition. It will allow the CLECs, who were wrongfully blocked  
2 from competing, to participate in the settlement credits at a level more commensurate  
3 with the market position they would have held but for Qwest's wrongful actions.  
4

5 Also, Qwest appears to have structured the time periods of the credits based on the  
6 similar payments/credits ordered in the Minnesota Orders<sup>1</sup> issued by their PUC. In  
7 Minnesota, the PUC ordered Qwest to pay nearly \$26,000,000 in penalties and it ordered  
8 payments or credits to the CLECs (at the option of the CLEC) without any maximum  
9 limits on the amounts. The Minnesota PUC pointed out that the penalty was not  
10 unreasonable considering Qwest and its affiliates generate \$20 billion in annual revenues.  
11 On reconsideration, after analyzing certain jurisdictional issues, the Minnesota PUC  
12 scaled back the time periods of the payments/credits to coincide with the secret  
13 agreements, but it maintained its lack of any kind of a cap on the credits/payments.  
14

15 I will leave the jurisdictional arguments for the attorneys to address in the context of a  
16 Commission Order if one is ultimately required, but in the context of a settlement as  
17 Qwest has proposed here in Arizona, the issue of what the Arizona Corporation  
18 Commission may or may not ultimately have the jurisdiction to order Qwest to do is not  
19 particularly relevant. Instead, in this context of a voluntary settlement, Qwest should  
20 agree to do what is equitable (and within its power) to correct the adverse impacts of its  
21 prior bad acts.  
22  
23

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24 <sup>1</sup> See In the Matter of Complaint of the Minnesota Department of Commerce  
25 Against Qwest Corporation Regarding Unified Agreements, Minnesota Public Utilities  
26 Commission Docket No. P-421/C-02-197, Order Assessing Penalties, issued February 28, 2003,  
and Order After Reconsideration on Own Motion, issued April 30, 2003.



1 Arizona Dialtone is a relatively small CLEC operating in some very unique markets,  
2 however I am sure other CLECs have experienced similar adverse impacts on their entry  
3 into the competitive LEC services market. But under the proposed Settlement, Qwest is  
4 able to limit its credits to the same period as its wrongful actions and thereby benefit from  
5 its stifling of competition during that time period. In order to ameliorate the delaying  
6 effect that Qwest's wrongful actions have had, the CLECs should be able to participate in  
7 the Settlement based on the time periods after Qwest stopped its wrongful conduct.

8  
9 Although Qwest still contends that it did nothing wrong, it also apparently contends that  
10 regardless of whatever it was doing in the past, it cleaned up its act with the termination  
11 of the secret agreements. I do not agree that Qwest paying its favored CLECs to  
12 terminate its secret agreements provides any indication that Qwest has stopped its  
13 wrongful conduct, but even assuming that Qwest actually did clean up its act in early  
14 2002, the other CLECs who had been suffering under the discriminatory treatment  
15 perpetrated by Qwest should be allowed the benefit of the secret credits, but at a  
16 participation level corresponding to the time period after Qwest put a stop to its  
17 discriminatory conduct. Therefore, the Section 3 credits should be offered for the 18  
18 month period prior to the Commission's approval of the Settlement, the Section 4 credits  
19 should be offered for the 8 months prior to the Commission's approval of the Settlement,  
20 and the Section 5 credits should be offered for the 16 months prior to the Commission's  
21 approval of the Settlement. This will allow the CLECs to participate in some of the  
22 economic benefits of the secret agreements, but also to do so based on the marketplace as  
23 it evolved for at least some extent of the time after Qwest allegedly cleaned up its act.

24  
25 Then, the credits should be continued on an ongoing basis into the future to equal the full  
26 intended five year term of the secret agreements. Qwest paid its favored LECs to

1 terminate the secret agreements early, and that payment by Qwest should not be allowed  
2 to limit its liability to the other CLECs that were not allowed to participate in the  
3 agreements and not allowed to participate in the early termination payments.  
4

5 **Q. HOW DO THE MAXIMUM AMOUNTS PLACED ON THE VARIOUS CLEC**  
6 **CREDITS AFFECT ARIZONA DIALTONE?**

7 A. The caps placed on the CLEC credits, like many of the other more ambiguous clauses in  
8 the proposed Settlement, leave Arizona Dialtone with no way to reasonably evaluate its  
9 participation in the credits. These maximum amounts placed on each of the CLEC credit  
10 sections should be eliminated.  
11

12 There is no justification for allowing Qwest to limit its credits to the CLECs by placing  
13 the CLECs at risk of having their participation in the settlement reduced to a percentage  
14 of their claims. The purpose of placing caps on the credits cannot be to provide Qwest  
15 with knowledge of its exposure under the Settlement. Qwest is fully aware of the amount  
16 of services it has sold to CLECs, and therefore it can determine with great accuracy the  
17 extent of its potential liability. We have asked Qwest for its projections, but it has failed  
18 to provide them. The numbers that Qwest is projecting should be in the record before the  
19 Commission, but—like the previously secret agreements—they are nowhere to be found.  
20

21 Instead, the only possible purpose for these caps is to allow Qwest to limit its liability at  
22 the expense of the CLECs. Qwest was aware that it was granting preferential treatment to  
23 its favored CLECs when it entered into the secret agreements, and it should come as no  
24 surprise to Qwest that it would have to offer similar terms to the other CLECs. The  
25 public interest is not served by allowing Qwest to reduce its liability at the expense of the  
26 CLECs that it discriminated against, and the caps on the credits should be eliminated..

1 **Q. HOW WILL THE REQUIREMENT FOR CLECS TO PROVIDE EVIDENCE OF**  
2 **INACCURATE DUF RECORDS AFFECT THEIR PARTICIPATION IN THE**  
3 **SETTLEMENT?**

4 A. I can echo the concerns expressed by AT&T in its brief in Response to the Proposed  
5 Settlement. It can be very difficult for a CLEC to establish evidence of inaccuracies in  
6 Daily Usage File (DUF) records, especially for earlier time periods. Also, it is apparent  
7 from the secret agreements that Qwest had knowledge of inaccuracies in its DUF records  
8 but it chose to settle up with the complaining CLEC instead of fixing the problems in its  
9 systems.

10  
11 Qwest is the party with the most information relating to the accuracy of its DUF records,  
12 not the individual CLECs. Qwest is the one with the knowledge of its own systems and  
13 with the collective knowledge gained from every complaint and any accompanying data  
14 that it received from each of the CLECs over the past years. Qwest is clearly the party that  
15 knows whether it is producing accurate DUF record information. Yet the proposed  
16 Settlement is worded as if Qwest does not know a thing about any inaccuracies unless  
17 each individual CLEC can somehow prove that inaccuracies existed. Additionally, the  
18 proposed Settlement does not include any description of what evidence would be  
19 sufficient for Qwest to pay these credits.  
20

21 Also, Qwest contends that it does not keep its DUF record information for more than  
22 several weeks before it is rotated off its computer systems. It seems highly inequitable for  
23 the Commission to require the CLECs to recreate records from prior time periods when  
24 Qwest does not even retain the data itself.  
25

26 **Q. DOES ARIZONA DIALTONE HAVE EVIDENCE OF INACCURACIES IN**

1           **QWEST'S DAILY USAGE FILE INFORMATION?**

2       A.    Yes, but only with regard to time periods after those specified in Section 5 of the  
3           proposed Settlement. We obtained the calling records for 100 of our customer's lines in  
4           the fourth quarter of 2002 and compared those records against the DUF records from  
5           Qwest for the same time period. The data revealed 8000 long distance calls missing from  
6           Qwest's DUF records. After repeated complaints to Qwest, they apparently found an  
7           error in their tracking system and corrected it in June of 2003. To check their fix, we ran  
8           another comparison of the records for the second quarter of 2003 on the same lines. That  
9           data revealed more than 13,200 missed calls in the months of April and May, and then  
10          after Qwest corrected their DUF system the number of missed long distance calls dropped  
11          to only 200 for the month of June of 2003.

12  
13       Clearly something was amiss with Qwest's computer systems generating its DUF records.  
14       Qwest has not fully explained how it is that its DUF records became so inaccurate so I  
15       cannot offer an opinion as to how this evidence would reflect toward Qwest's  
16       performance during the time periods specified in Section 5 of the proposed Settlement  
17       Agreement, but this does demonstrate the anti-competitive effect of Qwest's secret  
18       agreements with their major CLECs. These kinds of issues of inaccuracies in computer  
19       generated data must be investigated and corrected over time as they occur. Being a  
20       smaller CLEC, Arizona Dialtone cannot afford to do major random sampling and testing  
21       procedures on Qwest's data. Instead, Arizona Dialtone and other CLECs of its size  
22       depend on the larger CLECs with larger sums of money at stake to work through these  
23       kinds of errors and inaccuracies requiring Qwest to continually perfect and correct its  
24       systems. But in Qwest's case this apparently did not occur. By Qwest entering into secret  
25       agreements with its major CLECs, it was able to convert its problems with inaccurate  
26       DUF records into a compromise agreement fixing its potential liability to its major

1 CLECs for errors and inaccuracies in its tracking systems. Instead of providing an  
2 incentive for Qwest to fix its systems on an ongoing basis and to stay on top of errors in  
3 the DUF records, Qwest was able to treat these inaccuracies in its systems as a mere cost  
4 of doing business, even if it leaves the smaller CLECs suffering from the inaccurate  
5 records that Qwest should have had the incentive to be fixing.

6  
7 Arizona Dialtone, like other smaller CLECs, does not have the leverage nor the financial  
8 ability to fight all these battles with Qwest. Instead, we depend on the effects of  
9 competition in an open and level marketplace imposed on Qwest largely through the  
10 major CLECs to compel Qwest to act appropriately and fix problems when they arise,  
11 instead of settling their problems with its major CLECs through secret compromises and  
12 leaving all the smaller players having to pay to fight the battles that the Qwest's favored  
13 CLECs no longer had an incentive to fight.

14  
15 **Q. DOES THE REQUIREMENT FOR QWEST TO OFFER CREDITS INSTEAD OF**  
16 **CASH PAYMENTS TO THE CLECS UNDER THE PROPOSED SETTLEMENT**  
17 **CAUSE CONCERNS FOR ARIZONA DIALTONE?**

18 **A.** Yes, on two levels. First, CLECs that are no longer in business will not be able to  
19 participate in the credits given in Sections 3, 4 and 5 of the proposed Settlement. Instead  
20 of credits that are of no value to a CLEC that is no longer doing business with Qwest, the  
21 Settlement should require Qwest to make cash payments to the CLECs. Additionally, the  
22 issuance of credits instead of cash payments, without any limitations on how Qwest is to  
23 apply the amounts, will allow Qwest to apply the credits first to any past due bills without  
24 any concern as to whether the outstanding bills are disputed.

25  
26 In order for a CLEC to effectively utilize the credits specified in the proposed Settlement,

1 it must be in business. This is most likely the reason Qwest was ordered to make  
2 payments or credits in the Minnesota Orders. Many CLECs have already exited the  
3 Arizona market, and Arizona Dialtone may soon be in the same situation.

4  
5 Qwest has filed a revision to its PAL Tariff that is currently pending in a different docket  
6 in which it proposes to reduce its payphone line rate to a level significantly below even a  
7 residential line. Arizona Dialtone is Qwest's only significant competitor for payphone  
8 lines in Arizona. If Qwest is successful in reducing its PAL rates to such low  
9 levels—below its residential rates—below its UNE-P rates—and below its similar rates in  
10 other states—Arizona Dialtone may no longer be in business, or at least we may not be  
11 operating in a form anywhere close to the current business. As with other CLECs that are  
12 no longer operating, if Arizona Dialtone goes out of business, under the wording of the  
13 proposed Settlement, Qwest will wind up paying us nothing. This situation is not in the  
14 public interest, as it rewards Qwest for its wrongful conduct. In order to eliminate this  
15 backwards incentive, the proposed Settlement should be modified to require Qwest to  
16 make cash payments to the CLECs instead of credits.

17  
18 Also, the proposed Settlement should be modified to clarify that Qwest cannot apply any  
19 of the credits to outstanding bills that the CLEC has disputed. If this clarification is not  
20 made, Qwest will first apply any credits to any outstanding amounts that have been billed  
21 to the CLEC. This allows Qwest to undermine the only leverage that CLECs have to get  
22 Qwest to voluntarily correct billing errors, which is to dispute the bill and refuse to pay it.  
23 To eliminate this inequitable effect, the proposed Settlement should include an additional  
24 provision barring Qwest from applying and credits/payments to any billings that are  
25 disputed by the CLEC.  
26

1 **Q. HOW DOES THE RELEASE LANGUAGE INCLUDED IN THE PROPOSED**  
2 **SETTLEMENT AFFECT ARIZONA DIALTONE?**

3 A. The scope of the releases included under the CLEC credits sections should be defined  
4 with more certainty. They are currently defined only by the very broad scope of the  
5 Commission's Dockets, which leaves Arizona Dialtone and the other CLECs unable to  
6 evaluate the claims that they are releasing should they choose to participate in the  
7 Settlement.

8  
9 For example, Qwest's inaccurate DUF record system has caused Arizona Dialtone to  
10 expend significant resources investigating and correcting the problems, and it directly  
11 caused significant damages in lost access revenues that we were unable to bill to the  
12 IXCs. However, Qwest's secret agreements that are the subject of the Commission's  
13 secret agreements Docket dealt with issues of inaccurate DUF records. By releasing any  
14 claims relating to the secret agreements Docket, is Arizona Dialtone also releasing its  
15 inaccurate DUF records claims? They certainly should not be, at least not to the extent  
16 that the Section 5 credits are for different time periods than our inaccurate DUF records  
17 claims. And this is just one example of the multitude of varying issues that were  
18 addressed in the Commission's Dockets that then imply releases that are far too broad in  
19 scope.

20  
21 At a minimum, the releases should be narrowly defined for each of the three credit  
22 sections to include only the claims that are the basis of the particular credits, they should  
23 be limited to the periods applicable for each credit section, and the CLEC should only be  
24 required to execute the particular release for the specific credits that the CLEC is electing  
25 to receive. For example, the released claims should be defined in each section as only  
26 those claims relating to Qwest's discriminatory discounting, local call termination billing,

1 and its inaccurate DUF records for each of the respective time periods. Then, the CLEC  
2 should only be required to execute a release relating to the particular credits that the  
3 CLEC elects to participate in.  
4

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A.** Yes, it does.  
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